1945 K

Examiner

# File No. S. Kan. 2/45

Legal DEPARTMENT

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**Subject:—** Suits: Kanara.

C.S no. 2 of 1945.

Vaman Narayan Nayak Pltff.

Vs.

1. Province of Bombay;
2. D.S. Kaikini;
3. Kashinath Vaman Sheliya. } Defts.

Claim Rs. 7,201.

First Appeal No. 354 of 1947

16/6

File No. S. Kan. 2/45

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| | | Vs. | |
| | | Province of B'bay | |
| | | D. S. kaikini. | |
| | | K. V. shetiya. | |
| | | claim — Rs. 7201. | |
| | | For recovery of Rs. Rs. 6798/- as price of timber with interest thereon at 6 p.c. per annum amounting to Rs. 403/- from 1st Jan 1944 up to the date of the suit. | |
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In the Court of the First Class Subordinate Judge, at Kar[illegible]r.

Special Jurisdiction Original Suit No. 2 of 1945.

Waman Narayan Nayak, age 37, caste Goud Saraswat Brahmin, occupation merchant, residing at Ankola, District North K[illegible]nara... Plaintiff

versus.

1. The Province of Bombay.

2. D. S. Kaikini, aged about 50, Saraswat Brahmin, Divisional Forest Officer, Western Division, Kanara, Karwar.

3. Kashinath Vaman Shetiya, aged 38, caste Goud Saraswat Brahmin, occupation Forest Contractor, Resident of Aversa, Taluka Ankola District North Kanara. ... Defendants.

Claim Rs. 7201-0-0

Plaintiff begs to state as follows:-

1. Defendant no. 2 is a public officer appointed by the Bombay Provincial Government as Divisional Forest Officer, Western Divisi[illegible] Kanara and Defendant no. 1 is responsible for the acts of Defendan[illegible] no. 2 done by him in his official capacity. Defendant no. 3 is a Forest contractor working in Government forest area under jurisdiction of defendant no. 2.

2. One Mr. Pandurang Narayan Shambhag Baleri of Kodkani village in Kumta Taluka had taken a forest contract from Government in Block No. VIII coupe no. 14 of Kodambali, Katgal Round, Kumta Range for the year 1942-43 within the territorial jurisdiction of defendant no. 2 and accordingly had cut timber in the coupe. Some of which was carried to Tadri Bunder in Kumta Taluka and stocked there. It was so carried under passes obtained from the Katgal Forester, the nos. of the passes being 36,42, 44, 51, 55, 58, 60, 66, 67, 68 and 69 which were issued in April and May 1943. The said material was stocked in Tadri Bandar in May 1943. The Kumta Range Forest Officer was requested to issue the necessary export order by the said P.N. Shambhag Baleri and the said R.F.O. issued the order under his no. 388 dated 10-5-1943 allowing export. The said order having been issued in accordance with the direction of the Divisional Forest Officer, Western Division, Kanara under his No. W/14/674 dated 26-3-1943.

3. Out of the said material stocked at Tadri, some was exported to Bombay side and the following material consisting of 219 logs and measuring 230 Khandies remained at Tadri Bundar waiting [illegible]rt. T

export. The valuation of the logs in December 1943 and onwards with their measurements and kind was as shown below:-

| Kind. | Measurement in Khandies. | Rate. | Total value. |
|---|---|---|---|
| (1) Khair | 158.20. | Rs. 35/- p.k. | Rs. 5665-0-0 |
| (2) Jamba | 61.75 | Rs. 16/- p.k. | Rs. 988-0-0 |
| (3) Haldu | 8.75 | Rs. 15/- p.k. | Rs. 131-4-0 |
| (4) Kindal | 2.50 | Rs. 16/- p.k. | Rs. 40-0-0 |
| (5) Matti | 2.75. | Rs. 21/- p.k. | Rs. 57-12-0 |
| (6) Vote. | 1.05. | Rs. 16/- p.k. | Rs. 17-0-0 |
| Total | 250 khandies. | | Rs. 6798-0-0 |

4. On 12th May 1943 the abovementioned material stacked at Tadri Bundar as detailed above was sold to plaintiff by the said Mr. P.N. Shanbhag at the then prevailing rates for Rs. 4,756/-. Thus the said material came to be owned by the plaintiff on and after 12-5-1943. The said Mr. P.N. Shanbhag also handed over to the plaintiff the passes and the orders pertaining to that stock. The plaintiff wanted to export the same but as it was the off-season then and no country craft was available, the plaintiff could not ship the material to Bombay side and the same remained at Tadri Bundar till about December 1943.

5. It is learnt that on 19th June 1943 the said Mr. Shanbhag the contractor of coupe no. 14 transferred his rights of the materials then existing in that coupe to Defendant no. 3. Obviously the material carried outside the coupe and already sold to plaintiff was not and could not be the subject matter of the transfer to defendant no. 3. By the transfer on 19th June 1943 defendant no. 3 could not acquire any right in the material already sold to plaintiff on 12th May 1943 and already exported and stacked from the coupe to the Tadri Bundar in May 1943.

6. After the plaintiff's sale dated 12th May 1943, the said Shanbhag informed the Range Forest Officer, Kumta, in writing on 8th July 1943 that he had effected the said sale in favour of the plaintiff and that the plaintiff may be given export passes as might be required by him and when the matter of the said export passes was pending before the Range Forest Officer, Kumta, who was already supplied by the said Shanbhag the list of the said

as per his desire,it is learnt that the Divisional Forest Officer, Karwar, i.e. Defendant no. 2 though he knew the plaintiff's ownership of the said material issued an export order with regard to the said plaintiff's timber stocked at Hadri to defendant no. 3 without the knowledge of the plaintiff or his predecessor, the said Mr. Shanbhag. He did not even call upon the plaintiff or Mr. Shanbhag to submit his say with regard to the export of that timber. Under the order issued by the said D.F.O., it is learnt that defendant no. 3 removed the said material in December 1943 during plaintiff's absence and without his consent. The procedure adopted by the said D.F.O., ( defendant no. 2) with regard to the issue of the order together with the order of export is illegal, ultra vires an unauthorised. The D.F.O., is not the authority prescribed under Government Rules to issue export orders. In any case he had no authority to issue export orders when the Range Forest Officer's export order was current. The usual procedure of getting back the Forest passes by the Forester at Katgal before issuing the export order, was not observed by the D.F.O. The action of the D.F.O. ( defendant no. 2) in issuing the export order in December 1942 in favour of defendant no. 3 is clearly illegal, ultra vires and unauthorised. Defendant no. 3 had no interest in the material at Hadri to the knowledge of the D.F.O. when the export order was issued in defendant no. 3's favour. The plaintiff's ownership of the said material was specifically brought to the notice of the Forest Department, inspite of which the D.F.O. ( Defendant no. 2) acting on behalf of Government gave an export order to Defendant no. 3 which deprived the plaintiff of the said material which could not have been exported by the plaintiff without an export pass from the Government. Neither was plaintiff a party to the illegal procedure followed and order passed by defendant no. 2 , i.e. the Divisional Forest Officer.

7. By the said export order of the D.F.O. ( defendant no. 2) in favour of defendant no. 3, defendant no. 3 was enabled to export all the said material to Bombay side in defiance of plaintiff's

rights. Hence defendants nos. 1 and 2 are liable to the plaintiff, to reimburse him the value of the timber exported by defendant no. 3 and loss to plaintiff. Accordingly plaintiff issued a notice in writing dated 5-1-1944 to defendant no. 1 which was delivered by Registered post to the Secretary to the Bombay Provincial Government on 5-2-1944 and to defendant no. 2 by delivering it by registered post on 7-2-1944 as required by section 80 Civil Procedure Code calling upon defendants nos. 1 and 2 to pay the plaintiff, the then value of the said timber i.e. Rs. 6798/- together with interest at Rs. 9-6-0 per cent per annum. Defendants nos. 1 and 2 have neither paid the said amount to the plaintiff nor replied to the said notices.

8. Defendant no. 3 having unauthorisedly and without any rights removed and disposed of plaintiff's said material, and having caused loss to the plaintiff is also liable to pay the value of the said timber with interest to plaintiff.

9. The cause of action for this suit arose at Tadri in Kumta Taluka within the special Jurisdiction of this court in December 1943 when plaintiff was deprived of the said material.

10. The valuation for purposes of court fees and jurisdiction is Rs. 7,201/- and is within the cognisance of the special Jurisdiction of this court.

11. It is, therefore, prayed that a decree be passed in favour of plaintiff ordering the defendants to pay plaintiff the amount mentioned below together with future interest at 6/- per cent per annum and costs of this suit.

| | |
|---|---|
| (i) The value of the timber as mentioned in para no. 2. | Rs. 6798-0-0 |
| (ii) Interest at 6/- per cent per annum ( plaintiff claiming only 6/- per cent by remission though he has demanded 9-6-0 per cent per annum) on the said amount from 1-1-1944 to date. ..... | Rs. 403-0-0 |
| Total Rs. | 7,201-0-0 |

I, Waman Narayan Nayak, plaintiff in the above suit, do hereby state on solemn affirmation that the contents noted above are true to the best of my knowledge and belief. In witness whereof signed this day of January 1945. at Karwar

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Kanara Civil Suit No. 2 of 1945.

In this suit the plaintiff claims Rs. 6798-0-0 as price of timber with interest thereon at 6 per cent upto the date of suit. The facts are these. One P.N. Shanbhag entered into an agreement with the Forest Department on 29.10.1942 for the felling, removal and purchase of timber firewood etc. from coupe No. 14 Block No. VIII of Kodamble Forest in Kumta range. Owing to some difficulties, he sold all material of the coupe to the defendant No. 3 and then on 24.6.1943 applied to the Forest Department for the transfer of the contract in its entirety to defendant No. 3. The transfer was sanctioned by the Conservator of Forests. Meanwhile it appears that on 12.5.194 Mr. Shanbhag had purported to sell a certain quantity of timber previously removed from the coupe and stacked at Tadri Bunder for export. The Forest Department was not aware of the sale when the transfer to defendant No.3 was sanctioned. In December 1943 the defendant No. 3 was given export passes for exporting the timber stacked at Tadri and the material was exported. The plaintiff now contends (1) that this timber had already been sold by Shanbhag to him before the transfer of the contract and consequently defendant No. 3 had no right to it; (2) the Divisinnal Forest Officer issued export passes to defendant No. 3 although he knew that the timber at Tadri had been sold to plaintiff.

The suit is defensible. In the first place the plaintiff has no cause of action against Govt. and the D.F.O. Neither Shanbhag nor the plaintiff had informed the D.F.O. about the sale of 12th May 1943 before the transfer in favour of defendant No. 3 was sanctioned. The plaintiff's grievance, if any, must be against Shanbhag who appears to have defrauded him. The export passes to defendant No. 3 had been properly issued as he had purchased the entire material of the coupe from Shanbhag. Besides, the sale in favour of plaintiff was

without the permission of the D.F.O. and therefore unauthorised under clause 1(a) of the second condition of the agreement. It could not therefore confer any right on the plaintiff. The suit is also barred under sections 43 and 74 of the Indian Forest Act XVI of 1927.

3) The Chief Conservator of Forests recommends that legal assistance should be granted to the Divisional Forest Officer who is defendant No. 2. The defence may be sanctioned on the lines of the affidavit filed and the papers may be forwarded to the administrative department for sanctioning legal assistance to the Divisional Forest Officer. The draft W.S. may be approved

RW
7/8/45

A.A.L.R. RK 8/8

R.L.A. Amm 13/8/45

for C.S. R.D. 14-8-45

xNo. 6044
dt. 14-8-45

In the Court of the First Class Subordinate Judge;

At Karwar.

Civil Suit No.2 of 1945.

Vaman Narayan Nayak. ... ... Plaintiff.

versus

1. The Province of Bombay. )
2. D. S. Kaikini. )
3. Kasinath Vaman Shetiya. ) ... ... Defendants.

Claim - Rs.7201/-.

Written Statement on behalf of defendants Nos.1 and 2 is as follows:-

1. The plaintiff's claim is denied in toto.

2. The suit is barred under section 43 of the Indian Forest Act XVI of 1927. The suit is also barred against defendant No.2 under section 74 of the same Act.

3. The plaint discloses no cause of action against either of the defendants. The defendant No.2 was not aware of the illegal sale dated 12th May 1943 of the timber stacked at Tadri Bunder to plaintiff. As Mr. Shanbhag had sold the entire material of coupe No.14 to defendant No.3 and as the transfer of his contract to defendant No.3 had been sanctioned by the Forest Department, the issue of export passes to defendant No.3 was perfectly in order. The defendants deny that the Divisional Forest Officer was aware of the alleged sale in plaintiff's favour when the export passes were issued. The plaintiff's cause of action, if any, is against Mr. Shanbhag who caused loss to him and not against any of these defendants.

4. Assuming without admitting that the Divisional Forest Officer was aware of the sale in plaintiff's favour, it is submitted that he is not bound to recognise such sale which was without the permission of the Divisional Forest Officer and therefore contrary to the terms of Mr. Shanbhag's contract with Government. The alleged sale therefore did not confer any rights on the plaintiff

5. The defendants do not admit the quantity and value of the timber as alleged in paragraph 3 of the plaint.

6. These defendants do not admit that the plaintiff became the owner of the material at Tadri Bunder on and after 12th May 1945 as alleged in paragraph 4 of the plaint. These defendants have no knowledge of the other facts alleged in that paragraph.

7. It is denied that the timber stocked at Tadri Bunder was not subject to the transfer of the contract to defendant No.3.

8. With regard to the allegations in paragraph 6 of the plaint these defendants submit that the Range Forest Officer, Kumta is not authorised to issue export passes and application to him for that purpose was therefore incompetent. The other allegations in paragraph 6 are denied. As neither the plaintiff nor Mr. Shanbhag had informed the defendant No.2 about the alleged sale it was not necessary for him to invite their objection. Plaintiff's contentions to the contrary are false and hence denied.

9. The plaintiff is not entitled to any relief.

10. It is therefore submitted that the suit against three defendants should be dismissed with costs.

District Government Pleader, Kanara,
at Karwar.

I, the District Government Pleader, Kanara, at Karwar, do hereby declare that what is stated in paragraphs 1 to 10 above is true according to the information received and believed to be true. This verification is made at on the day of 19[redacted].

District Government Pleader, Kanara,
at Karwar.

Suits.
Kanara.
For recovery of Rs. 6798-0-0 as price of timber with interest thereon at 6 per cent per annum amounting to Rs. 403-0-0 from 1st January, 1944 up to the date of the suit.

GOVERNMENT OF BOMBAY.
Legal Department.
Resolution No. 6094
Bombay Castle, 15th August 1945.

Letter from the Divisional Forest Officer, Western Divisional, Kanara, No. c/14/73, dated the 15/16 th April 1945.- Forwarding papers in the suit noted in the margin and requesting sanction to its defence.

Endorsement by the conservator of Forests No. 28/9/2 dated the 25/26th April, 1945 forwarding the above.

| In the Court of the Civil Judge, Senior Division Kanara. | Endorsement by the chief conservator of forests, Bomba |
|---|---|
| Civil Suit No. 2 of 1945. | |
| Vaman Narayan Nayak . . . . . .Plaintiff. vs. 1, The Province of Bombay 2. D.S. Kaikini 3. Kashinath Vaman Shetiya . . . . .Defendants. | |
| Claim Rs. 7201/- | |

Province, No. 34/456, dated the 1st/2nd May 1945 forwarding the above.

Endorsement by the Commissioner, Southern Division No. LST 698 dated the 16th May 1945.- Forwarding the above with his concurrence

Memorandum to the District Government Pleader, Kanara No. 6093 dated the 15th August 1945,- Forwarding a copy of the brief with its accompaniments in advance.

Resolution.- Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

for { P.N.Moos,
Secretary to Government.

To
* The Revenue Department,
* The Commissioner, Southern Division,
* The Chief Conservator of forests, B. P.
* The Conservator of Forestss S. C.
* The Divisional forest officer, W.D. Kanara
The District Government Pleader, Kanara.
(with two copies of the brief).

* with a copy of the brief.

55 5

Suits.
Kanara.
For recovery of Rs. 6798-0-0 as price of timber with interest thereon at 6 per cent per annum amounting to Rs. 403-0-0 from 1st January, 1944 up to the date of the suit.

GOVERNMENT OF BOMBAY.
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|---|---|
| In the Court of the Civil Judge, Senior Division Kanara. | Endorsement by the chief conservator of forests, Bombay |
| Civil Suit No. 2 of 1945. | |
| Vaman Narayan Nayak . . . . . .Plaintiff. vs. 1, The Province of Bombay 2. D.S. Kaikini 3. Kashinath Vaman Shetiya . . . . .Defendants. | |
| Claim Rs. 7201/- | |

Province, No. 34/456, dated the 1st/2nd May 1945 forwarding the above.

Endorsement by the Commissioner, Southern Division No. LST 69( dated the 16th May 1945.- Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Kanara No. 6093 dated the 15th August 1945,- Forwarding a copy of the brief with its accompaniments in advance.

Resolution.- Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

for { P.N.Moos,
{ Secretary to Government.

To
* The Revenue Department,
* The Commissioner, Southern Division,
* The Chief Conservator of forests, B. P.
* The Conservator of Forestss S. C.
* The Divisional forest officer, W.D. Kanara.
The District Government Pleader, Kanara.
(with two copies of the brief).

* with a copy of the brief.

1/2 and 3 — Q.C. and the brief

M.

7/9.

S.R. & the brief sent to S.C. Pleader.

7/9

Submitted

2 Please see the office note at p 30 ante. The D.D.P., Kanara has returned the required letter a Q.R. (with a brief prepared and) has been sent to the press. These papers may now be forwarded to the R.D. for sanctioning the legal assistance to the Divisional Forest Officer.

(Please see p 20 ante and Slip C)

Mur.
7/9.

PA
7/9

UR GRD No 6632-D. 8-9-45.

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REVENUE DEPARTMENT
No.
8 SEP. 1945
Serial No. 7

R. D.

Submitted with ref. to para.3 of the L.D. note, dated 7th August 1945. ✓ p 20 ante

2. In the circumstances stated, sanction may be accorded under rule 189(7) of the Law Officers' Rules to the grant of legal assistance to Mr. D.S. Kaikini, D.F.O., W.D. Kanara, to defend the suit instituted against him by Mr. Vaman Narayan Nayak of Ankola in the First Class Sub-Judge's Court at Karwar, distt. Kanara. The appended draft letter and endt. may issue after u.o.r to the F.D. ✓ p 79 of the Rules.

3. The papers may be returned to the L.D. after issue of orders.

FINANCE DEPARTMENT
No. 29/9/45
Serial No. 17

(Addl.) J.A.S. 27-9-45

26-9-45.
27

Secy. (after u.o.r.) 28th Sept 1945. M. 26/9.

Kanara.

For recovery of Rs. 6,798 as price of timber with interest thereon at 6 per cent. per annum amounting to Rs. 403 from 1st January 1944 up to the date of the suit.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT

Resolution No. 6094.

Bombay Castle, 15th August 1945.

Letter from the Divisional Forest Officer, Western Division, Kanara, No. C. 14/73, dated the 15th/16th April 1945—Forwarding papers in the suit noted in the margin; and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION, KANARA.
Civil Suit No. 2 of 1945.

Vaman Narayan Nayak ... ... ... Plaintiff;

*versus*

1. The Province of Bombay ... ...
2. D. S. Kaikini ... ... ... } Defendants.
3. Kashinath Vaman Shetiya ... ...

Claim—Rs. 7,201.

Endorsement by the Conservator of Forests, No. 28/9/2, dated the 25th/26th April 1945, forwarding the above.

Endorsement by the Chief Conservator of Forests, Bombay Province, No. 34/456, dated the 1st/2nd May 1945, forwarding the above.

Endorsement by the Commissioner, Southern Division, No. LST. 698, dated the 16th May 1945—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Kanara, No. 6093, dated the 15th August 1945—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

Original

P. N. MOOS,
Secretary to Government.

G. R., No. 6094, L. D., dated the 15th August 1945.

To

*The Revenue Department,
*The Commissioner, Southern Division,
*The Chief Conservator of Forests, Bombay Province,
*The Conservator of Forests, Southern Circle,
*The Divisional Forest Officer, Western Division, Kanara,
The District Government Pleader, Kanara (with two copies of the brief).

*With a copy of the brief.

No. of 1945.

Copy forwarded for information and guidance to

Submitted after issue.
2. File in S. Kan 145 (new file)

Issued
29/11

*Chronological Statement of Facts.*

The plaintiff sues to recover Rs. 6,798 as price of timber with interest thereon at 6 per cent. per annum amounting to Rs. 403 from 1st January 1944 up to the date of the suit.

2. One Pandurang Narayan Shanbhag of Kumta had entered into an agreement with the Forest Department on 29th October 1942 for the felling, removal and purchase of timber, firewood etc. from coupe No. 14 of Block No. VIII of the Kodamble forest in Kumta range for Rs. 2,888 for running the firewood depot at Kumta.

p. 3 of file I.

3. As the work of felling could not be completed within the period stipulated in the contract, Mr. Shanbhag was granted extension up to 31st October 1943 for felling and up to 31st December 1943 for removal.

p. 3 of file II.

4. As Mr. Shanbhag experienced difficulties in running the firewood depot he applied on 24th June 1943 for transferring the contract in its entirety to defendant No. 3. Sanction was accorded to the proposed transfer by the Consevator of Forests, Southern Circle, by his No. 28/18/261, dated 30th June 1943.

pp. 1–3 do.

p. 5 do.

5. Meanwhile, in March 1943, a list of logs above 36" in girth prepared on the said coupe was received by the office of the Divisional Forest Officer, Western Division, Kanara, for approval and for permitting the contractor (Mr. Shanbhag) to export the logs from the port of Tadri. This was approved and returned to the Range Forest Officer, Kumta (*see* paragraph 2 of the Divisional Forest Officer's Report, dated 27th February 1944).

p. 21 do.

6. It seems from paragraph 4 of the plaint that in May 1943 Mr. Shanbhag had sold to the plaintiff a certain quantity of timber stacked at the port of Tadri. On 1st December 1943 the defandant No. 3 applied to the Divisional Forest Officer for permit to export the timber from coupe No. 14 stacked at Tadri.

pp. 11–12 do.

7. The defendant No. 3's application was forwarded on the same day by the Divisional Forest Officer to the Range Forest Officer, Kumta, with instructions to permit him to export the timber stacked at Tadri.

p. 13 do.

8. On 5th February 1944, the plaintiff gave notice of suit under section 80 of the Civil Procedure Code and in January* 1945, he filed the present suit in the Court of the Civil Judge, Senior Division, Karwar.

*(Exact date not known).

*Grounds of Defence.*

*No cause of action.*—The plaint discloses no cause of action against Government and the Divisional Forest Officer (defendant No. 2). It is alleged by the plaintiff that a certain quantity of timber—to be exact, 219 logs weighing 230 Khandis—which was stacked at Tadri Bunder was sold to him by Mr. P. N. Shanbhag on 12th May 1943. On 19th June 1943 Mr. Shanbhag informed the Divisional Forest Officer that he had sold all material from coupe No. 14 to the defendant No. 3 and requested further that export passes for the material may be issued in defendant No. 3's favour as desired by him. This was followed by his application, dated 24th June 1943, for transferring the contract in its entirety to the defendant No. 3. The plaintiff's contention (paragraph 5 of the plaint) is that the timber already carried outside the coupe and stacked at Tadri Bunder could not be included in the material transferred to defendant No. 3 as it had already been sold to plaintiff on 12th May 1943 and that consequently defendant No. 3 had acquired no right in that material. It is further alleged that the Divisional Forest Officer issued the export permit to defendant No. 3 in respect of the timber stacked at Tadri although he knew that that material had previously been sold to the plaintiff, and without calling upon either the plaintiff or Mr. Shanbhag to submit his objections. This contention is misleading as well as false and should be denied. Mr. Shanbhag had not disclosed the fact of the alleged sale to plaintiff either in his letter dated 19th June 1943 or in

p. 9 of file II.
p. 1 do.

his application dated 24th June 1943. It is true that on 9th July 1943 Mr. Shanbhag had applied to the Range Forest Officer to issue export passes to the plaintiff in respect of the logs stacked at Tadri but that was subsequent to his transfer of the contract and the sale of the entire material in the coupe to the defendant No. 3. It is not clear whether that application was brought to the notice of the Divisional Forest Officer. However, under Rule 67 (*b*) of the Bombay Forest Rules (framed under section 41 of the Indian Forest Act XVI of 1927), for forest produce from land included in a reserved or protected forest export passes can be issued only by the Conservator of Forest, the Divisional Forest Officer, or the Sub-Divisional Forest Officer or any other Officer authorised in this behalf in writing by the Conservator of Forests, the Divisional Forest Officer or the Sub-Divisional Forest Officer. From the report of the Divisional Forest Officer it appears that the Range Forest Officer, Kumta, was not authorised to issue such passes. The Divisional Forest Officer issued export passes to the defendant No. 3 on the strength of Mr. Shanbhag's applications, dated 19th June 1943 and 24th June 1943 and on the authority of the order of the Conservator of Forest dated 30th June 1943 sanctioning the transfer of Mr. Shanbhag's contract to the defendant No. 3. It is perfectly clear that the Divisional Forest Officer was unaware of the sale to the plaintiff of the timber stacked at Tadri until the notice under section 80 was received. In these circumstances the issue of the export passes to the defendant No. 3 in December 1943 was perfectly in order and the plaintiff has no cause of action against Government or the Forest Department. The proper remedy for him to follow was to proceed against Mr. Shanbhag who sold the entire material of the coupe to the defendant No. 3 to the detriment of the plaintiff's rights under the alleged sale of 12th May 1943. His cause of action, if any, is thus against Mr. Shanbhag and not against the defendants Nos. 1 and 2 because it was Mr. Shanbhag who caused the loss, if any, to the plaintiff. Mr. Shanbhag has not even been impleaded in this suit although he is the necessary party. It should therefore be urged that there is no cause of action against defendants Nos. 1 and 2 and that the suit against them should be dismissed with costs.

2. *Merits.*—Even on merits, the plaintiff's case against defendants Nos. 1 and 2 must fail. It has been pointed out that the Divisional Forest Officer was ignorant about the so-called sale dated 12th May 1943 in favour of the plaintiff until the notice of the suit was received. However, assuming without admitting that the Forest Officer had such knowledge, he was still not bound to recognise it because under the terms of the contract Mr. Shanbhag had no authority to sell any part of the coupe material without permission in writing of the Divisional Forest Officer. Clause (*a*) of the second condition of the contract lays down that the contractor, his servants, and agents shall abstain from subletting or assigning this contract or any portion thereof or share or interest therein to any person whatsoever without the previous permission in writing of the Divisional Forest Officer. The sale in favour of the plaintiff was in breach of this condition and therefore unauthorised and did not confer any rights on the plaintiff which the Forest Department was bound to recognise. The plaintiff's contentions are thus misconceived and untenable.

3. *Jurisdiction.*—The suit is barred under section 43 of the Indian Forest Act XVI of 1927. That section enacts that the Crown shall not be responsible for any loss or damage which may occur in respect of any timber or other forest produce while at a depot established under a rule made under section 41 or while detained elsewhere for the purposes of this Act; and no Forest Officer shall be responsible for any such loss or damage unless he causes such loss or damage negligently, maliciously or fraudulently. The timber in question was stacked at Tadri Bunder for the purposes of export. Under section 41 (*2*) (*a*) of the Indian Forest Act read with Rule 66 of the Bombay Forest Rules, the timber could not be exported without an export pass from the officer duly authorised in that behalf. It is therefore clear that the timber was detained at Tadri Bunder for the purposes of the Act and therefore section 43 applies and the Crown is absolved from all liability for the

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alleged loss. Moreover, there is no evidence of any negligence fraud or malice against the Divisional Forest Officer and he too is therefore protected. The suit against the Divisional Forest Officer is further barred under section 74 of the Act which protects him from anything done in good faith under the Act.

4. Without prejudice to the foregoing, the amount claimed by the plaintiff should not be admitted. The District Government Pleader should consult the Forest Officers regarding the quantity and price of timber mentioned in paragraph 3 of the plaint and raise necessary contentions. It should further be contended that the plaintiff is not entitled to interest prior to the date of the suit. There is no stipulation for the payment of such interest and no usage has been pleaded and proved. The claim to interest is also untenable under the Interest Act of 1839 because the principal amount is not claimed under any written instrument (*see* Mulla's Civil Procedure Code, 11th Edition, pp. 143–144). All these contentions will of course be necessary if the Court for any reason holds that there is cause of action against Government.

Received on -31st January 1945.
Registered on-13th March 1945.
Decided on -21st July 1947.
Duration - 2 year 5 months and 20 days.

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IN THE COURT OF the Civil Judge, Senior Division.

AT Karwar. Exhibit no. 97

Special Jurisdiction Civil Suit no.2 of 1945.

Vaman Narayan Nayak, age 37, caste Goud-Saraswat Brahmin occupation merchant resident of of Ankola, District North Kanara. — Plaintiff.

against.

1. The Province of Bombay.
2. D.S.Naikini, age about 50, Saraswa Brahmin, Divisional Forest Officer Western Division, Kanara, Karwar.
3. Kasinath Vaman Shetiya, age 38, caste Goud-Saraswat Brahmin, occupation forest contractor resident of Amarsa, taluka Ankola, District North Kanara.
4. Pandurang Narayan Shanbhag, age 35, Goud-Saraswat Brahmin, trader of Kumta.
5. Balmukund Keshava Acharya, age 40, Goud-Saraswat Brahmin, trader of Sankeri. — Defendants.

Claim- Rs.7201-0-0.

The Plaintiff sues to recover from Defendants nos. 1 to 3 Rs.7201/-, future interest and costs.

2. The Plaintiff's case is as follows:-

Pandurang Narayan Shanbhag Baleri of Kodkani had taken a forest contract from Government in Block no.VIII, Coupe no.14 of Kodambale, Katgal Beat, Kumta Range for 1942-43. He had cut timber in that Coupe and part of it was removed by him to Tadri Bundar and stacked there. It is removed under passes nos. 33, 42, 44, 51, 55, 59, 60, 67. 68, and by which were obtained from the Katgal Forester. The said material was stacked at Tadri Bundar in May 1943. The Range Officer, Kumta was requested by said Pandurang *Shanbhag to issue necessary export order and he issued order under his no.368 of 10th May 1943 allowing export. He did so under the directions of the Divisional Forest

*O.P. NO.2.

Conservator vide the

Divisional Forest Officer was aware of the sale in favour of Plaintiff, the Divisional Forest Officer was not bound to recognise that sale as it was without the permission of the Divisional Forest Officer and hence contrary to the terms of Shanbhag's contract with the Government. The sale did not confer any rights on the Plaintiff. The quantity and the value of the timber mentioned in the plaint is not admitted. It is denied that the timber stacked at Tadri Bunder was not the subject matter of the transfer of the contract to Defendant no.3. The Range Forest Officer, Kumta was not authorised to issue export passes and -- application to him for that purpose was therefore incompetent. As Defendant no.2 was not intimated either by Shanbhag or Plaintiff about the sale to Plaintiff, Defendant no.2 was not bound to invite their objections. The Plaintiff is not entitled to any reliefs. The suit be dismissed with costs.

4. Defendant no.3 contends at exhibit no.17 :-

Immediately after P.W. Shanbhag got the Coupe contract from the Government, he entered into a contract with Defendant no.3 to sell to him the timber. Shanbhag had to pay his instalments to Government out of the monies advanced to him by Defendant no.3. Shanbhag had sold all the material in the Coupe to Defendant no.3 long before the alleged sale to Plaintiff. In persuance of this contract Defendant no.3 advanced monies to Shanbhag. As Shanbhag was unable to carry out the full terms of his contract with the Government. Defendant no.3 had to arrange to remove the material cut in the Coupe to Tadri Bundar debiting the costs to Shanbhag. The material thus removed was kept at Tadri Bundar in possession of Defendant no.3's man awaiting export on receipt of export passes. Shanbhag had therefore no right to sell to Plaintiff the said material. The sale in favour of Plaintiff is not admitted. The sale is neither valid nor legal. Some of the material at Tadri Bundar was exported to Mangalore and Goa and not to Bombay. The Quantity and value shown in the Plaint is not admitted. The Plaintiff has not produced in the suit the sale deed referred to in the plaint. The alleged sale in favour of Plaintiff, if at all, must be a bogus one. The same must

Officer, Western Division, Kanara, given under HSS No.C/14/674 dated 26th March 1943. Part of the material stacked at Tadri Bunder was exported to Bombay side and the 290 logs measuring 230 Khandies were remaining awaiting export. Their value was Rs.6798/- as per rates ruling in December 1943. On 12th May 1943 Pandurang Shanbhag sold the said 290 logs to Plaintiff for Rs.4758/- and Plaintiff became the owner of that material with effect from 12th May 1943. Pandurang Shanbhag handed over to the Plaintiff the passes and orders relating to said material. As it was off-season the Plaintiff could not ship the material to Bombay side and hence it remained at Tadri Bunder till about December 1943. The Plaintiff learns that on 19th June 1943 said Shanbhag transferred his rights of the materials then existing in Coup no.14, to Defendant no.3. That transfer did not relate to the material sold to Plaintiff and which was carried out of the Coupe. By the transfer of 19th June 1943, Defendant no.3 could not acquire any right to the material sold to Plaintiff. On 9th July 1943 said Shanbhag informed the Range Forest Officer, Kumta in writing that he had sold to Plaintiff said 290 logs and requested that the Plaintiff may be given export passes for removing the said material. When that matter was pending before the Range Forest Officer, Defendant no.2 the Divisional Forest Officer, Karwar who knew of the Plaintiff's ownership of the said material issued export order in respect of the said material to Defendant no.3 without the knowledge of the Plaintiff and Shanbhag. On the strength of that order Defendant no.3 removed the said material in December 1943 without Plaintiff's consent and in the absence of the Plaintiff. The procedure adopted by Defendant no.2 regarding the issue of the order together with the order of export is illegal, ultra vires and unauthorised. Divisional Forest Officer was not the authority competent to issue export orders. In any case he had no authority to issue export order when Range Forest Officer's export order was current. The usual procedure of getting back the forest passes issued * by the Forestor at Katgal before issuing the export order, was not observed by the Divisional Forest Officer. Defendant no.2 knew when he issued the export order in favour of

* p.no

Received on -31st January 1945.
Registered on-13th March 1945.
Decided on -21st July 1947.
Duration - 2 year 5 months and 20 days.

In THE COURT OF the Civil Judge, Senior Division.

AT Karwar. Exhibit no. 97

Special Jurisdiction Civil Suit no.2 of 1945.

Vaman Narayan Nayak, age 37, caste Goud-Saraswat Brahmin occupation merchant. residing at or Ankola, District North Kanara. Plaintiff.

against.

1. The Province of Bombay.
2. D.S.Naikini, age about 50, Saraswat Brahmin, Divisional Forest Officer, Western Division, Kanara, Karwar.
3. Kasinath Vaman Shetiya, age 38, caste Goud-Saraswat Brahmin, occupation forest contractor resident of Awarse, taluka Ankola, District North Kanara. Defendants.
4. Pandurang Narayan Shanbhag, age 35, Goud-Saraswat Brahmin, trader of Kumta.
5. Balmukund Keshava Acharya, age 38, Goud-Saraswat Brahmin, trader of Sankeri.

Claim- Rs.7201-0-0.

The Plaintiff sues to recover from Defendants nos. 1 to 3 Rs.7201/-, future interest and costs.

2. The Plaintiff's case is as follows:-

Pandurang Narayan Shanbhag Baleri of Kodkani had taken a forest contract from Government in Block no.VIII, coupe no.14 of Kodambare. Katgal Round, Kumta Range for 194x-xx. He had cut timber in that Coupe and part of it was removed by him to Tadri Bundar and stacked there. It is removed under passes nos. 33. 42. 44. 51. 55. 59. 60. 67. 68, and 69 which were obtained from the Katgal Forester. The said material was stacked at Tadri Bundar in May 1943. The Range Officer, Kumta was requested by said Pandurang *Shanbhag to issue necessary export order and he issued order under his no.368 of 10th May 1943 allowing export He did so under the directions of the Divisional Forest

*O.P. no.2.

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have been brought about by Shanbhag and Plaintiff who are
b.p. no.5. relations in collusion for some ulterior object. Plaintiff is a mere sweet-meat shop-keeper. He has never dealt in timber or any other allied business. Shanbhag cheated Defendant no.3's man at Tadri bundar and under false representation took from him the forest passes which he never returned inspite of the demands from the Range Forest Officer. Defendant no.3 got fair rights on the material at Tadri Bundar on the strength of the previous contract confirmed by the writing of 19th June 1944 as well as by the transfer of the coupe contract. Defendants nos.1 and 2 had to recognise the rights of Defendant no.3 and as such the export permission in his favour was neither illegal nor collusive nor unauthorised. Defendant no.3 has not removed nor disposed of any material belonging to Plaintiff. Plaintiff is therefore not entitled to any relief as against Defendant no.3. The suit against Defendant no.3 should be dismissed. Balmukund Keshava Ashari had filed Civil Suit no.52 of 1944 in this Court for dissolution of partnership and account. The material referred to in this suit was the subject-matter of Civil Suit no.52 of 1944. Shanbhag the alleged transferor of the Plaintiff had applied in Civil Suit no.52 of 1944 claiming a share in the said partnership. Hence said two persons are necessary parties.

5. The said two persons were added as Defendants nos.4 and 5. Defendant no.4 Pandurang v. Shanbhag has remained exparte.

6. Defendant no.5 contends at exhibit no.31 —

He is not a necessary party. Defendant no.3 at whose instance he has been impleaded should be saddled with his costs. The points of difference between him and Defendant no.3 are to be agitated in Civil Suit no.52 of 1944 filed by him. They cannot be decided in this suit. He denies Plaintiff's title to the suit material which formed the subject-matter of the partnership. As Defendant no.4 could not proceed with his contract with the Government, he transferred all his rights in the contract to the partnership.

7. Issues (Exhibit no.32) are :-

1. Do Defendants nos. 1 and 2 prove that this is barred against them in view of Section 43 of the Indian Forest Act (XVI of 1927) ? ?

2. Do they prove that the suit against Defendant no.2 is barred under Section 74 of the said Act ? O.P. no.6

3. Does Plaintiff prove that on 12th May 1943, the entire material or part of it (in that case what part of it) was lying on Tadri Bundar ?

4. Does Plaintiff prove that Defendant no.4 was the owner on 12th May 1943 of the material lying on Tadri Bundar ?

5. Does Plaintiff prove that Defendant no.4 sold to Plaintiff on 12th May 1943 the material lying on the Tadri Bundar ?

6. Do Defendants nos. 1 and 2 prove that the sale by Defendant no.4 to Plaintiff was not valid, being without the permission of the Divisional Forest Officer and the Forest Department was not bound to recognise that sale ?

7. Does Plaintiff prove that Defendant no.2 was aware of the sale by Defendant no.4 to Plaintiff when he (Defendant no.2) issued export passes to Defendant no.3 ?

8. Does Plaintiff prove that the action of Defendant no.2 in issuing export passes in favour of Defendant no.3 was illegal, ultra -- vires and unauthorised ?

9. What was the value of the material lying on Tadri Bundar when Defendant no.3 removed the same therefrom ?

10. To what damages, if any, is Plaintiff entitled and from which of the Defendants nos. 1 to 3 ?

11. Did Defendant no.3 prove the partnership of which he and Defendants nos.4 and 5 are alleged to be partners is liable for the amount found due if any ?

12. Is Defendant no.5 a necessary party to this suit ? If not, whether Plaintiff, or Defendant no.3 is liable for Defendant no.5's costs ?

13. What order ?

8. My findings are :-

1. No.

2. Yes.

5. The entire material of 290 logs was lying on Tadri bunder on 12th May 1943.

4. Defendant no.4 was not the owner of that material on 12th May 1943 but was entitled to get its value from Defendant no.3, as per exhibits nos 95 and 96.

5. No.

6. Does not survive in view of the finding on issue no.5. If it survives, I find that the sale in favour of Plaintiff was not valid being without the permission of the Divisional Forest Officer. The forest department was not bound to recognise that sale.

7. No.

8. No.
In view of the finding on issue no.5, issues nos. 9 and 10 do not survive. If they survive, I find on issue no.9 that the value of the material was Rs.6798/-, and on issue no.10 that the Plaintiff would be entitled to damages of Rs.6798/-. In view of my finding on issue no.5, none of Defendants nos. 1 to 3 are liable.

11. In case Plaintiff succeeds, the partnership of Defendants nos. 3 and 5 will be liable to pay the amount to be decreed in favour of Plaintiff.

12. Yes. He is not entitled to get his costs either from Plaintiff or from Defendant no.3.

13. See below.

## Reasons.

9. Pandurang Narayan Shanbhag, Defendant no.4, entered into a contract with the Governor of Bombay of exploiting Coupe no.1 block no.VIII in the Kodambale forest area which was within the jurisdiction of the Kumta Range of the Western Division of the Kanara forest. That contract was entered into on 29th October 1942 by which Defendant no.4 agreed to pay Rs.2868/- and that amount was payable in four instalments. The first of Rs.722/- to be paid at the time of signing the agreement, the second of same amount payable on or before 31st October 1942 or before removal of material from sub-Coupe no.1, third of same amount payable

on or before 31st December 1942 or before removal of the material from sub-Coupe no.2 and the fourth of the same amount payable on or before 28th December 1943 or before removal of the material from the remaining sub-Coupe. The relevant conditions of the agreement were that the contractor Shanbhag should abstain from sub-letting or assigning the contract or any portion thereof or share or interest therein without the previous permission in writing of the Divisional Forest Officer (Clause II(a), should abstain from selling, mortgaging or otherwise disposing of the materials from the Coupe without the permission of the Divisional Forest Officer, (Clause II, sub-clause r), and should abstain from transferring the contract in respect of the Coupe to any one else unless 10/- per cent of the purchase -- money as transfer fee was paid to Government, (Clause II. Schedule (the said contract no.50. On the same day Pandurang Shanbhag entered into another contract with the Governor of Bombay agreeing to run a saw pit at Ambe out of the material removed from Coupe 14 of Block no.VIII which he had contracted to exploit as stated already. That agreement is also at exhibit no.50. Subraya the brother of said Pandurang Shanbhag and one Shrinivas Laxman Pai stood sureties for the due execution by said Pandurang Shanbhag of the said contract. On 2nd November 1942 Pandurang Shanbhag - Defendant no.4 - entered into a contract with Kashinath Shetiya - Defendant no.3 to sell to Defendant no.3 all the logs of Nandi variety removed from Coupe no.14 of Block no.VIII at the rate of Rs.22/- per Khandi and the delivery of half of it was to be given at Tadri Bundar before December 1942 and the other half by end of January 1943. Pandurang Shanbhag took from Kashinath Shetiya an advance of Rs.500/- in respect of this contract Exhibit no.95. On 29th November 1942 Pandurang Shanbhag entered into another

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contract with Kashinath Shetiya to sell to Kashinath Shetiya timber of varieties like Matti, Jamba, Kindal, Hebbalsu and other inferior quality at the rates agreed upon and mentioned in the document, -- Exhibit no.96, and the same were to be delivered at Tadri Bundar by end of March 1943. In respect of this contract he took Rs.500/- as advance. Pandurang Shanbhag removed from the Coupe to the Tadri Bundar 290 logs of timber of different varieties as per passes on the dates

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shown below.

| Date | No. of logs. | Pass nos. | Exhibits. | |
|---|---|---|---|---|
| 3-4-1943. | 12 | 38 | 71. | |
| 11-4-1943 | 29 | 42 | 73. | |
| 12-4-1943. | 17 | 44 | 74. | |
| 16-4-1945. | 30 | 51 | 75. | |
| 22-4-1943 | 18 | 55 | 72. | * On 17th April 194 Range Forest Officer by exhibit no.82 |
| 30-4-1943 | 37 | 66 | 76. | intimated Pandurang |
| " | 14 | 67 | 77. | Shanbhag that sanctio |
| " | 38 | 68 | 78. | was received to remov |
| " | 15 | 69 | 79. | from sub-Coupe no.I, 303 logs and that he |
| 9-5-1943 | 16. | 59 | 82. | may obtain from Range Forestor Katgal the |
| | 43 | 60 | 81. | necessary passes for |
| Total | 299 logs. | 11 | | that purpose. |

On 10th May 1943 the Range Forest Officer, Kumta, intimated — Pandurang Shanbhag that he may remove 479 logs of jungle variety but of sub-Coupe no. II and III of Coupe no. 14 of Block no. VIII

•p, no.9. and he further intimated [illegible] Shanbhag should arrange to see that owing to the removal of the said logs no inconvenience was caused to the local people in the matter of supply of firewood. He further stated that orders were received to that [illegible] from the Divisional Forest Officer, Western Division, Kanara in his no. W 44/272 dated 26th April 1943 (exhibit no.83 On 19th June 1943 Pandurang Shanbhag applied to the Divisional Forest Officer by exhibit no.52 stating that he had sold to Kashinath Shetiya the entire material in Coupe no.14 of Block no. VIII which he had purchased from the Government and praying that export passes (Ex. 53) may be issued as desired by — Kashinath Shetiya. On 24th June 1943 Pandurang Shanbhag gave application exhibit no.51 to the Divisional Forest Officer stating that on account of paucity of funds he could not fulfil the terms of the contract with the Government and that he had therefore transferred the working of the Coupe and the running of the depot to Kashinath Shetiya. Kashinath Shetiya agreed to abide by the terms of Shanbhag's contract with the Government. The Divisional Forest Officer by his endorsement no. C/14/[illegible]

dated 24th June 1943 recommended to the Conservator of Forests, Southern Circle the transfer by Pandurang Shanbhag of the whole work of felling the Coupe and running the depot on payment of 10/- per cent on account of transfer charges. The Conservator of Forests by his order dated 30th June 1943 sanctioned the transfer on condition of the sureties agreeing to the transfer and to the conditions of the original agreement and on payment of Rs.28?/-. On 21st July 1943 the sureties gave their consent to the transfer. All these orders are to be found below exhibit no.50. Pandurang Shanbhag filed before the Range Forest Officer, Kumta application exhibit no.55 dated 9th July 1943 which appears to have been received by the Range Forest Officer, ~~Kumtaxxx

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right over any material from the Coupe whether it may be in the Coupe or outside it. The Range Forest Officer was requi to report the quantity of material stacked at Tadri and was informed that orders for issuing passes would be passed on consulting the Government Pleader. The Range Forest Officer was further informed that till then timber should not be allowed for export to either Pandurang Shanbhag or Kashinath Shetiya. The Divisional Forest Officer further stated that th Divisional Forest Officer alone was competent to issue export passes for the material from the depot as well as from the Coupe. On 2nd August 1943 Kashinath Shetiya applied by exhibit no.58 to the Divisional Forest Officer not to issue passes in favour of Pandurang Shanbhag or any one on his behalf. On 3rd August 1943 the Divisional Forest Officer wrote to Range Forest Officer exhibit no.59 stating that no timber from Block no.VIII Coupe no.14 should be allowed to be exported either by the former or the present contractor. He further stated that if any order releasing the timber had been passed previously the same was cancelled and that until proper arrangements for running the fuel depot were made no export could be allowed and that fresh orders should be obtained for permission to release timber. On 5th August 1943 the Range Forest Officer intimated to Pandurang Shanbhag that he was called by him in his letter no.982 of 17th July 1943 to produce the passes relating to 290 logs referred to in his application of 9th July 1943 and that he had not done so till then and that he should do so within 7 days therefrom. He further stated that the said passes were required by the Divisional Forest Officer for passing orders in respect thereof exhibit no.64. By exhibit no.65 Range Forest Officer issued to Pandurang Shanbhag another reminder to produce the said passes On 1st December 1943 the father of Kashinath Shetiya on behalf of Kashinath Shetiya applied to the Divisional Forest Officer

O.P. no.11.

for issuing export passes and the Divisional Forest Officer by his order no.6553 dated 1st December 1943 allowed Kashinath Shetiya to export 150 Khandies of timber stacked at Tadri Bundar from Coupe -- no.14 of Block no.VIII purchased by him.

10. I have enumerated in chronological order all the events that appear from the documentary evidence and with which Pandurang Shanbhag and Kashinath Shetiya are concerned. From these facts it will be easy to appreciate the case that the Plaintiff wants to make out. The -- Plaintiff's case is that on 12th May 1943 he purchased from Pandurang Shanbhag 290 logs stacked at Tadri Bundar for Rs.4756/- and in support of this contention he has relied upon the receipt exhibit no.67, the list of logs exhibit no.60, another document exhibit no.68 showing how the amount of Rs.4753/- was arrived at, and Log Book exhibit no.80. The Plaintiff's case is that by virtue of this sale he became owner of the 290 logs stacked at Tadri Bundar and that the officers of the Forest Department and in particular the Divisional Forest Officer was aware of this sale and still he ordered export passes in respect of the said 290 logs to be issued in favour of Defendant no.3 and that this act of Defendant no.2 - the Divisional Forest officer - was illegal, unauthorised and ultra vires. He further contends that the Defendant no.3 Kashinath Shetiya got only the right in the timber existing in the Coupe on 19th June 1943 or 24th June 1943 and was not entitled to the timber that was already removed from the Coupe to the Tadri Bundar and hence Kashinath Shetiya was not entitled to any ownership right in the 290 logs stacked at Tadri Bundar and was not entitled to obtain from the Forest Department the passes to export the said timber. Defendant no.3 has, according to Plaintiff, therefore got -- illegal advantage by the wrong orders passed by the Divisional Forest Officer and hence he prays that Defendant nos. 1 to 3 should be directed to pay to him Rs.6798/- the value of the 290 logs as per rates prevailing in December 1943 and interest thereon at Rs.6/- per cent per annum from December 1943 till date of suit. O.P.no.

11. The defence of Defendants nos. 1 and 2 the Government of the Province of Bombay and the Divisional Forest Officer respectively is that the Divisional Forest Officer was never intimated by the Plaintiff or anybody on his behalf of the alleged sale in favour of Plaintiff and that the Forest Department had not sanctioned the sale and hence the Forest Department could not have recognised the sale if any, in favour of Plaintiff and they were quite justified in issuing export passes to Defendant no.3 Kashinath Shetiya. Defendant no.3 contends that the sale alleged by Plaintiff is absolutely hollow and was never intended to be acted upon nor was it acted upon.

12. We have therefore to see whether the transaction of the alleged sale in favour of Plaintiff was a hollow affair or a genuine one. The Plaintiff is admittedly doing confectionery business since several years past. He has never before the date of the alleged sale nor thereafter done any forest business. The Plaintiff is a relation of Pandurang Shanbhag as the latter is Plaintiff's wife's mother's brother. The Plaintiff has admitted in his evidence before the Court that he did not remember if he intimated in writing either to the Range Office or to the Divisional Forest Officer about the sale in his favour. He did not apply to the Divisional Forest Officer for export passes. He never personally approached the Divisional Forest Officer. After the alleged sale in his favour, the Plaintiff did not take any steps to appoint a watchman to guard the 290 logs stacked on the Tadri Bunder and alleged to have been purchased by him. The Plaintiff admits that sometime in July he came to know that Pandurang Shanbhag had transferred the Coupe to Kashinath Shetiya. He says that thereafter he did not give a notice to Pandurang Shanbhag nor did he personally approach him to inquire about the alleged sale in favour of Kashinath Shetiya. Then we have to see his conduct in the suit along with the suit which was filed on 31st January 1945 --

he did not file the sale memo exhibit no.67 or the list of logs exhibit no.60 or the paper exhibit no.68 or the 11 passes referred to in paragraph 9 above or the log-book exhibit no.80. He produced them on 24th February 1947 by an application exhibit no.[illegible] the contents of that application are material and hence I will state them: "So long I was unable to produce the documents on account of my illness and consequent inability to make a search for the documents. The documents were misplaced and were not to be traced. He had recently recovered from illness and soon after his recovery he made search for them and on obtaining them he had produced them." In his evidence before the Court he has made many prevaricating statements on the point of his inability to produce the documents along with the plaint. At first he states that he gave the 11 passes and exhibit nos.67 and 68 to his pleader when the plaint was drafted. He further admitted that he did not take them back from his pleader thereafter. When he was, however, confronted with his allegation in the application exhibit no.34, he stated that the documents were mislaid when they were in his custody. He then stated that he was ill for 2-3 months about 11 or 12 months ago. He was examined on 14th April 1947 and 15th April 1947. That means he was ill sometime between January to March 1946. He further stated that the papers were in a box the key of which was with his father-in-law and that he got the key about 8 months ago that is sometime in November or December 1946 and that thereafter he got the papers from the box. The papers in the box, according to him, were the 11 passes and that he gave those passes to his pleader Mr. Prabhu about 6 or 7 months back. He further states that exhibits nos.67 and 68 were not in the box the key of which was with his father-in-law and he states that he gave exhibits nos.67 and 68 to his pleader when the plaint was drafted. When he was confronted with his earlier statement before the Court that he had given exhibit no.67 and 68 to his pleader while drafting the plaint, he said that he might have given them to his pleader while drafting the plaint. All these circumstances go to show that the Plaintiff was not at all keen on trying to establish his title to the 290 logs before the Forest officers nor was he really in

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possession of the documents exhibits nos.67, 68 69 and 80 and the 11 passes produced by him with exhibit no.34. To my

O.P.no.14. mind it appears that all these documents must have been in the custody of Pandurang Shanbhag - Defendant no.4. These circumstances go a long way to establish the contention of Defendant no.3, that the alleged sale in favour of Plaintiff was a hollow or a fictitious affair. In view of the admissions of the Plaintiff in his evidence that he never orally or in writing intimated the Officers of the Forest Department of the sale in his favour, it is clear that Plaintiff cannot make any grievance against the Officers of the Forest Department in issuing export passes in favour of Kashinath Shetiya - Defendant no.3. On behalf of Plaintiff much reliance is placed on the application exhibit no.55 which is dated 12th June 1943 but which appears to have been presented to the Range Forest Officer, Kumta, on 12th July 1943 as will be clear from the endorsement of the receipt of that application made on exhibit no.55. It appears on the strength of exhibit no.55 the Range Forest Officer referred to the Divisional Forest Officer as to whether Defendant no.3 - Kashinath Shetiya was the owner of the 290 logs which were stacked at Tadri Bunder or whether Kashinath Shetiya became entitled by virtue of the transfer of the coupe only to the material existing in the coupe on the date of the transfer. The Range Forest Officer suggested that Kashinath Shetiya - Defendant no.3 could only be entitled only to the material existing in the Coupe on the date of the transfer of the Coupe. The Divisional Forest Officer categorically intimated to him that in view of the transfer of the Coupe in its entirety having been effected ~~and having been effected~~ and having been recognised by the Forest Department in view of the order of the Conservator, Defendant no.3 became entitled to all the material of Coupe no. 14, Block no.VIII whether existing in it or outside it. Inspite of this categorical order passed by the Divisional Forest Officer as early as -- 29th July 1943, Plaintiff and Pandurang Shanbhag ought to have 30th

taken some effective steps to establish Plaintiff's title to the 290 logs at the Tadri Bundar. The omission to do so raises strong adverse inference against the theory of the sale in favour of Plaintiff being a genuine one. The statement of Pandurang Shanbhag before the Court gives some clue to his application of 8th July 1943. He says that at the time of the transfer of the Coupe to Kashinath Shetiya it was agreed by Kashinath Shetiya and Defendant no.5 that he should be given one-fourth share in the subsequent profits of the Coupe. By end of June the Conservator sanctioned the transfer provided 10/- per cent of the original contract amount was paid and the sureties in persuance of the original agreement undertook to be responsible to the loss, if any, that may be caused to Government, by acts of omission or commission of the transferee Kashinath Shetiya. Subraya a brother of Pandurang Shanbhag was a surety. He did not agree to sign the agreement unless Pandurang Shanbhag was given one-third share. He further states that Defendants nos.3 and 5 agreed to give one-third share but later on when he -- demanded a writing from them to that effect, they refused to do so. We find from exhibit no.50 that the surety Subraya Narayan Shanbhag and Shrinivas Laxman Pai signed the agreement in favour of the transferee on 21st July 1943. It appears that Pandurang Shanbhag gave the application exhibit no.55 to the Range Forest Officer only with a view to bring some pressure on Defendants nos.3 and 5 to compel them to agree to give him a share in the future profits of the coupe. Subsequently when the sureties signed the contract on 21st July 1943, he found that he could not thereafter effectively press his case of alleged sale to Plaintiff and we find naturally therefore no active steps have been taken either by Plaintiff or by Pandurang Shanbhag to press the theory of alleged sale in favour of Plaintiff before the Forest Officers. These circumstances do establish beyond doubt that the application exhibit no.55 was filed not with a bonafide purpose or with a genuine intention of establishing the alleged sale in favour of Plaintiff but with the ulterior object of bringing pressure on Defendants nos. 3 and 5. Then

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exhibits nos. 63 and 82. By exhibit no.82 the Range Forest Officer, Mr. D'souza intimated on 17th April 1943 Pandurang Shanbhag that he may remove from sub-Coupe no.1, 393 logs and that he had received sanction for the same and further intimated that the necessary passes may be obtained from the Round Forestor of Katgal. It is strenuously argued on behalf of the Plaintiff that the words "[illegible]" imply that the Range Forest Officer had obtained sanction of the Divisional Forest Officer to export the 393 logs mentioned in exhibit no.82. In this connection we have to see what is meant by the words consent to remove the 393 logs. The Divisional Forest Officer - Defendant no. b.p. no.16. -has stated that the word "[illegible]" relates to the transporting of 393 logs from the Coupe to the Tadri Bundar. The Divisional Forest Officer - Defendant no.2 -has stated that the passes required to transport the timber from the Coupe to the Bundar are called 'transport passes' and that the passes required for transporting the timber from the Bundar to outside destination -re called 'export passes'. This distinction is tacitly admitted by Pandurang Shanbhag in his deposition. The Divisional Forest Officer further states that the transport passes are issued by the Round Forestor to the contractor or the contractor is authorised to himself issue the transport passes for removing the timber from the Coupe to the Bundar. Export passes on the other hand, according to the Divisional Forest Officer, are issued only by the Divisional Forest Officer or by the Range Forest Officer on obtaining the previous sanction of the Divisional Forest Offi This position is not also seriously disputed by Pandurang Shanbh in his deposition. The words "[illegible]" in exhibit no.82 must he therefore related to transporting the timber from the Coupe to t Bundar. This is also clear from the fact that the requisite pass for that purpose were ordered to be obtained from the Range Forestor. The words "[illegible]" in exhibit nos.82 do not a all mean that the Divisional Forest Officer had given sanction for exporting the timber from the Bundar to outside destination Exhibit no.82 clearly states that Pandurang Shanbhag was permi

to transport 393 logs from sub-Coupe no.1. It does not state that he was permitted to export 393 logs from the Bundar to outside destination. Then reliance is placed on exhibit no.63. It is an intimation given by the Range Forest Officer Mr. D'souza on 10th May 1943 to Pandurang Shanbhag that he was allowed to transport 479 jungle variety logs prepared in sub-Coupe II and III, wherein he further stated that he had received from Divisional Forest Officer order no.Q/14/674 dated 24th April 1943 giving consent for the transport. It was argued that the order of the Divisional Forest Officer mentioned in exhibit no.63 was an order sanctioning the export of the logs referred to therein. Much capital was sought to be made on behalf of the Plaintiff for the non-production of the Divisional Forest Officer's order no.Q/14/674 dated 24th June 1943 and the order p. which the Divisional Forest Officer stated in exhibit no.63 that sanction was obtained to transport 379 logs. To keep the matters beyond the pale of any reasonable doubt, it would have been proper if these two orders had been produced by Defendant no.2. The Defendant no.2 - Divisional Forest Officer - has not explained why he has not produced them. On account of the non-production of these two orders it was argued that an adverse inference should be raised and it should be inferred that those orders, if produced, would not help the stand taken by Defendant no.2. I will now examine this argument. The Divisional Forest Officer has clearly stated that the export passes cannot be issued unless the timber is removed to the Bundar. By exhibit no.62 the Range Forest Officer intimated Pandurang Shanbhag to transport 393 logs from Coupe no.1 and by exhibit no.63 he intimated Pandurang Shanbhag to transport 479 logs from Coupes nos. II and III. Those permissions must have been granted in pursuance of the terms of the agreement exhibit no.50. In the agreement exhibit no.50 we find that the first instalment was to be paid at the time of the signing of the contract, second before the removal of the timber from sub-Coupe no.I, third before the removal of the timber from Sub-Coupe no.II, and the fourth and the last before the removal of the timber from the remaining sub-Coupe. It seems that both exhibits nos.62 and 63 were sent by the Range Forest Officer to

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Pandurang Shanbhag in persuance of this clause of the agreement. The Divisional Forest Officer has clearly stated that export passes are not issued till the material is removed from the Coupe to the Bunder. I find no reason to disbelieve him. If this position is accepted, there is no alternative but to hold that by exhibits nos. 82 and 63, permission was granted only to transport material from the Coupe to the Bunder. The words "[illegible]" in exhibit no.63 and Divisional Forest Officer's no.G/14/674 dated 26th April 1940 must have reference only to permission to transport the material from the Coupe to the Bunder and they cannot in any sense be deemed to be export -- permits. This inference is strengthened from the fact that in exhibit no.82, it was stated that the requisite passes were ordered to be obtained from the Round Forester who is competent to issue only transport passes to remove the material from the Coupe to Bunder. By no stretch of imagination, can it be argued

P.p. no.18. that the words "[illegible]" in exhibit no.63 meant permission by Divisional Forest Officer to export 393 logs referred to therein. According to Pandurang Shanbhag, 290 logs in dispute were included in 393 logs referred to in exhibit no.82. If that position is to be accepted as correct, the Plaintiff cannot make a grievance about the non-production of Divisional Forest Officer's no.G/14/674 dated 26th April 1943. No adverse -- inference can be raised by the omission to produce the sanction referred to in exhibit no.82 as I have tried to show that the sanction mentioned therein must have related to transport from Coupe to Bunder only. In the Plaint, it is alleged, contrary to Pandurang Shanbhag's statement that 290 logs in suit were -- included in 393 logs referred in exhibit no.82, that export permission regarding suit logs was given by the Divisional Forest Officer by his order no.G/14/674 dated 28th March 1943. This order of Divisional Forest Officer is to be found in exhibit no.63 (where the month of the order is shown as April instead of March as shown in the plaint), but exhibit no.63 clearly says that Pandurang Shanbhag was allowed to remove

479 Jungle variety logs from sub-Coupes nos. II and III. The order of Divisional Forest Officer referred to in exhibit no.63, cannot by any stretch of imagination be inferred as export permit. In view of the above discussion, it is, clear that no adverse inference can be drawn by the non-production of orders referred to in exhibits nos. 63 and 32. The non-production cannot therefore help the Plaintiff to prove that prior to 12th May 1943, Pandurang Shanbhag had obtained from the Divisional Forest Officer the requisite export passes in respect of 290 logs in suit. Under clause II sub-clause (r) of the Coupe-exploiting agreement, (exhibit no.50) Pandurang Shanbhag had agreed to abstain from selling any material from the Coupe without the permission of the Divisional Forest Officer. In view of this agreement, Pandurang Shanbhag had no power to sell any material without the consent of the Divisional Forest Officer. Besides filing by Pandurang Shanbhag of the application exhibit no.55 before the Range Forest Officer intimating of sale by him to Plaintiff of 290 logs at Bundar, there is nothing to show that either Plaintiff or Pandurang Shanbhag took any steps to prove the sale and to obtain the permission of the Divisional Forest Officer for that sale. When the Divisional Forest Officer's permission for sale to Plaintiff was not obtained, Plaintiff cannot make out a grievance that Divisional -- p. Forest Officer gave export permits to Defendant no.3, even in respect of 290 logs at Tadri Bundar. By exhibit no.52 Pandurang Shanbhag has clearly stated that he had sold to Mashineth Shetiya the entire material of the Coupe taken by him from the Forest Department. The word "logs" cannot be interpreted as only the materials then existing in the Coupe. By that word Pandurang Shanbhag must have meant all material whether inside the Coupe or outside as interpreted by the Divisional Forest Officer - Defendant no.3 in exhibit no.57. This interpretation gains strength from the fact that Pandurang Shanbhag or Plaintiff did not take any steps to prove before the Divisional Forest Officer the sale in favour of Plaintiff regarding 290 logs in suit. The Divisional Forest Officer - Defendant no.3 - was therefore perfectly justified in issuing

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the export passes to Defendant no.3 in respect of 290 logs in suit. As already stated by me the story of sale to Plaintiff on 12th May 1943 is a fictitious and colourable affair. It was first intended to bring pressure on Defendants nos.3 and 5 to give to Pandurang Shanbhag to give to him a share in the future profits of the Coupe. When that attempt failed, the present suit is a second attempt based on the 11 passes which Pandurang Shanbhag refused to surrender to the Range Forest Officer -- inspite of his two letters exhibits nos. 64 and 65. That -- Pandurang Shanbhag had secured these passes from Govind Subraya Kamat exhibit no.91, Kashinath Shetiya's watchman at Tadri Bunder, is clear from the evidence of exhibit no.91, supported by his post card exhibit no.93. I do not believe that any money was paid by Plaintiff as per exhibit no.67. I disbelieve the evidence of exhibit no.87, the writer of exhibit no.67. Plaintiff and Pandurang Shanbhag, about the payment of money as per exhibit no.67. On the whole, I have no hesitation to find that the story of sale to Plaintiff is a fictitious and colourable one. The Plaintiff is not therefore entitled to any relief as against Defendants nos.1 to 3. He has sought no relief against Defendant nos. 4 and 5 and hence his suit is liable to fail.

13. Assuming for sake of argument that the sale in favour of Plaintiff was a bonafide sale, the question is whether Pandurang Shanbhag had title to 290 logs on 12th May 1943. By exhibits nos. 95 and 96 Pandurang Shanbhag had undertaken to sell all logs in the Coupe at certain rates specified in them. Both of them are contracts of sale of unascertained goods as defined in Section 4 of the Sale of Goods Act (no.III of 1930). The -- material in exhibit no.95 was to be delivered by end of January 1943 and that in exhibit no.96 by end of March 1943. The 290 logs in dispute were sent to Tadri Bunder by 9th May 1943. I believe the statement of exhibit no.91 and find that he took the delivery of the logs as agent of Kashinath Shetiya, who title to them therefore passed to Kashinath Shetiya.

n.p. no.20.

9th May 1943 in view of the provisions of Section 23 of the Sale of Goods Act. The unascertained goods were ascertained and were actually delivered to Kashinath Shetiya through his agent exhibit no.91. Pandurang Shanbhag therefore had no ownership in 290 logs in suit after 9th May 1943. He had then only a right to receive the price thereof. The next question is whether the Plaintiff's case can fall under Section 30 of the Act. In order to bring the case under that Section the Plaintiff will have to prove that Pandurang Shanbhag delivered to him documents of title regarding the 290 logs in suit. Exhibit no.60 and 80 and the 11 passes cannot be deemed to be title-deeds. The title-deeds would, under the circumstances of the case, be the export passes on the strength of which Plaintiff could have exported the material to any destination he liked and in any manner he liked. In view of the conduct of the Plaintiff, which I have discussed already, I cannot find that he has acted in good faith. Section 30 does not help Plaintiff. I therefore find that on 12th May 1943 Pandurang Shanbhag was not the owner of the suit logs in specie, but was only entitled to get their value as per contracts exhibits nos. 95 and 96. The Plaintiff is therefore entitled to get no relief even as against Defendant no.3. His remedy, if at all, was against Defendant no.4, but he does not claim against him any relief. The Plaintiff must therefore fail.

14. I will now briefly discuss the remaining issues in the suit. On behalf of Defendant no.2 it is contended that the suit was barred under Section 43 of the Indian Forest Act XVI of 1927. That section exempts from liability the Crown and the forest officers for loss or damage caused to timber or other forest produce while it is lying at a depot or detained elsewhere for the purpose of this act. The Divisional Forest Officer has stated that at Tadri Bunder there is no Government depot. In the present suit, the grievance is not that any loss or damage was caused to the timber at the depot. The timber in dispute was not detained for the purpose of the forest Act. Section 43 does not, therefore, apply to the facts of this suit. Section 74

states that "no suit will lie against any public servant for anything done by him in good faith under this Act". The Defendant no.2 is admittedly a public servant. He has directed the issue of export passes in favour of Defendant no.3 under the authority given to him under the Forest Act. In directing the issue of the passes, he has acted in good faith as neither the Plaintiff nor Pandurang Shanbhag had tried to prove before him the alleged sale in favour of Plaintiff. The suit against -- Defendant no.2 is therefore barred under section 74.

15. In view of the passes referred to in para 9 above, I find that 290 logs were lying in Tadri Bunder before 12th May 1943. In view of my finding that the sale in favour of Plaintiff was a fictitious affair, findings on issues nos. 9 and 10 are not necessary. If they are necessary, I find that the value of 290 logs was Rs.6798/- as stated by Pandurang Shanbhag who has not been seriously cross-examined on that point and as Defendant no.3 has not entered into the box to challenge that valuation. In case the Plaintiff is to succeed he would get Rs.6798/-and nothing more as he is not entitled to claim interest for the period from December 1944 till date of the suit as he need not have waited nearly for one year.

16. Defendant no.4 contended in Original Suit No.52 of 194 that he was a partner along with Defendants nos. 3 and 5 and sought to be impleaded as a party in that suit. In that suit the Court found firstly on 7th September 1944 and then on 12th July 1945 that he was not a necessary party. Defendant no.4 has not filed any independent suit to establish his right to be a partner along with Defendants nos.3 and 5. Defendants nos. 3 and 5 admit that there was a partnership between themselves. I therefore find that the partnership of which Defendants nos.3 and 5 were partners would * be liable to the amount that may be awarded in case Plaintiff succeeds in the suit.

* o.p.no.22.

17. In order that the decree that may be passed in this suit should be binding on the partnership of Defendants nos.3

and 5, the presence on record of Defendant no.5 in this suit is necessary. He is therefore a necessary party. He is not therefore entitled to get his costs from Defendant no.5. Plaintiff did not claim any relief against Defendant no.5. Defendant no.5 need not have therefore appeared in the suit. He is not therefore entitled to get his costs from Plaintiff.

**O r d e r.**

Suit is dismissed.

Plaintiff do pay costs of Defendants nos. 1 and 2 in one set and those of Defendant no.3 in another set.

Plaintiff, Defendants nos.4 and 5 do bear their own costs.

21st July 1947. Sd. S. S. Tallur,
Civil Judge, Senior Division.

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Original
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"T r u e C o p y"

Clerk of the Court.

and 5, the presence on record of Defendant no.5 in this suit is necessary. He is therefore a necessary party. He is not therefore entitled to get his costs from Defendant no.5. Plaintiff did not claim any relief against Defendant no.5. Defendant no.5 need not have therefore appeared in the suit. He is not therefore entitled to get his costs from Plaintiff.

## Order.

Suit is dismissed.

Plaintiff to pay costs of Defendants nos. 1 and 2 in one set and those of Defendant no.3 in another set.

Plaintiff, Defendants nos.4 and 5 do bear their own costs.

21st July 1947. Sd. S. S. Tallur,
Civil Judge, Senior Division.

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Original
Copy

"True Copy"

Clerk of the Court.

Decree in original Suit
(Order 20 rules 6 and 7)

**DECREE.**

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In the Court of the Civil Judge. Senior Division,

AT Karwar. Exhibit. 98

Special Jurisdiction Civil Suit no.2 of 1945.

leaders.

Prabhu and Kasbekar.

Vamen Narayan Nayak, age 37, caste Goud-Saraswat Brahmin occupation merchant, resident of Ankola, District North Kanara. — Plaintiff

against.

ahadur ndavarkar.

1. The Province of Bombay.
2. D.S.Kaikini, age about 50, Saraswat Brahmin, Divisional Forest Officer, Western Division, Kanara, Karwar.

.S.Kamat.

3. Kashinath Vamen Shetiya, age 32, caste - Goud-Saraswat Brahmin, occupation-forest contractor resident of Awarse, Taluka Ankola, District North Kanara. — Defendants.

arte.

4. Pandurang Narayan Shanbhag, age 35, Goud-Saraswat Brahmin, trader of Kumta.

avinkurve and okarn S.V.

5. Balmukund Keshave Acharya, age 32, Goud-Saraswat Brahmin. trader of Sunkeri.

Claim Rs.7201-0-0.

Suit filed on- 31st January 1945.

Suit registered on- 13th March 1945.

The Plaintiff's case is as follows:-

Pandurang Narayan Shanbhag Baleri of Kodkani had taken a forest contract from Government in Block no.VIII. Coupe no.14 of Kodambale, Katgal Round, Kumta Range for 1942-43. He had cut timber in that Coupe and part of it was removed by him to Tadri Bundar and stacked there. It was removed under passes nos.33 42, 44, 51, 55, 59, 60, 67, 68 and 69 which were obtained from the Katgal Forester. The said material was stacked at Tadri Bundar in May 1943. The Range Officer, Kumta was requested by said Pandurang Shanbhag to issue necessary export order and he issued order under his no.368 of 10th May 1943 allowing export. He did so under the directions of the Divisional Forest Officer.

with March 1943. Part of the material stacked at Tadri Bunder was exported to Bombay side and the 290 logs measuring 230 Khandies were remaining awaiting export. Their value was Rs.6798/- as per rates ruling in December 1943. On 12th May 1943 Pandurang Shanbhag sold the said 290 logs to Plaintiff for Rs.4756/- and Plaintiff became the owner of that material with effect from 12th June 1943. Pandurang Shanbhag handed over to the Plaintiff the passes and orders relating to said material. As it was off-season the Plaintiff could not ship the material to Bombay side and hence it remained at Tadri Bunder till about December 1943. The Plaintiff learns that on 19th June 1943 said Shanbhag transferred his rights of the materials then existing in Coupe no.14. to Defendant no.3. That transfer did not relate to the materials sold to Plaintiff and which was carried out of the Coupe. By the transfer of 19th June 1943, Defendant no.3 could not acquire any right to the material sold to Plaintiff. On 9th July 1943 said Shanbhag informed the Range Forest Officer, Kumta in writing that he had sold to Plaintiff said 290 logs and requested that the Plaintiff may be given export passes for removing the said material. When that matter was pending before the Range Forest Officer. Defendant no.2 the Divisional Forest Officer, Kanwar, who knew of the Plaintiff's ownership of the said material issued export order in respect of the said material to Defendant no.3 without the knowledge of the Plaintiff and Shanbhag. On the strength of that order Defendant no.3 removed the said material in December 1943 without Plaintiff's consent and in the absence of the Plaintiff. The procedure adopted by Defendant no.2 -- regarding the issue of the order together with the order of export is illegal, ultra vires and unauthorised. Divisional Forest Officer was not the authority competent to issue export orders. In any case he had no authority to issue export order when Range Forest Officer's export order was current. The usual procedure of getting back the forest passes issued by the forest at Katgal before issuing the export order, was not observed by the Divisional Forest Officer. Defendant no.2

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knew when he issued the export order in favour of the Defendant no.3 that Defendant no.3 had no interest in the material remaining at Tadri Bunder. Inspite of the fact that the Plaintiff's ownership of the said material was specifically brought to the notice of the Forest Department, Defendant no.4 on behalf of the Government gave an export order to Defendant no.3 which deprived the Plaintiff of the said material. Plaintiff was not a party to the illegal procedure followed by Defendant no.2 and the order passed by him. Defendants nos.1 to 3 are, therefore, liable to reimburse Plaintiff the value of the timber exported by Defendant no.3. Notices to Defendants nos. 1 and 2 have been delivered by registered Post on 8th February 1944 and 7th ~~July~~ February 1944 respectively, calling upon them to pay Rs.6798/- the cost of the timber with interest at Rs.9-6-0 per cent per annum. Defendants nos. 1 and 2 have neither paid the amount nor replied to the notices. Defendant no.3 who had unauthorisedly removed the material and thus has caused loss to Plaintiff, is liable to pay the suit amount to the Plaintiff. Defendants nos. 4 and 5 have been impleaded in this suit as pro forma Defendants as per Court's order but Plaintiff did not seek any relief against them. The cause of action arose in December 1943. at Tadri in Kumta taluka within the special jurisdiction of this Court.

The valuation for purposes of Court fees and jurisdiction is Rs.7201/- and is within the cognisance of the special jurisdiction of this Court.

Plaintiff therefore prays that a decree be passed in his favour ordering the Defendants nos.1, 2 and 3 to pay Plaintiff the amount mentioned below together with future interest at 6 per cent per annum and costs of the suit.

| | |
|---|---|
| (i) The value of the timber as mentioned in para no.2. | Rs.6798-0-0. |
| (ii) Interest at 6/- per cent per annum (Plaintiff claiming only 6% per cent by remission though he has demanded 9-6-0 per cent per annum) on the said | Rs. 403-0-0. |

This suit coming on this day for final disposal before S. S. Tallur, Esquire, Civil Judge, Senior Division, Karwar, in the presence of Mr. Kasbekar, pleader for Plaintiff and of Rao Bahadur M. G. Chandavarkar for Defendants nos. 1 and 2, Mr. P. S. Kamat for Defendant no.3, Defendant no.4 exparte and of Mr. [illegible] for Defendant no.5. It is ordered and decreed as under.

Suit is dismissed.

Plaintiff do pay costs of Defendants nos. 1 and 2 in one set, Rs.234-0-0 (two hundred and thirty four) only and those of Defendant no.3 rupees [illegible] (two hundred and thirty seven and annas ten) only in one [illegible].

Plaintiff, Defendants nos. 4 and 5 do bear their own costs.

Bill of costs in Special Jurisdiction suit no.2 of 1945.

| Plaintiff. | | | Defendants no.1 and 2. | | |
|---|---|---|---|---|---|
| | | Rs. a.p. | | | Rs. a.p. |
| 1. | Stamp for plaint Ex.1. | 512- 8-0 | 1. | Stamp for power ... | |
| 2. | Do for power, Ex.3 | 0- 8-0 | 2. | Do for petition, Ex. 49. | 0-10-0 |
| 3. | Do for Exs.4,5,6,7,19, 22,23,24,25, 26,34,38, 41,48 and 83. | - 8-0 | 3. | Pleader's fee one-set. | 234- 0-0 |
| 4. | Pleader's fee double set | 468- 0-0 | 4. | Subsistance for witnesses. | - - - |
| 5. | Subsistance for witnesses Ex.43, 69, 84. | 12- 0-0 | | | |
| 6. | Service of process, Ex.1, 36, 41, 83. | 50-10-0 | | | |
| | Total Rs. | 1053- 0-0 | | Total Rs. | 234-10-0 |
| | Less costs of applications Exs.4,5,6,7,19,22, 23,24,25,26,34,38,41,48,83. | 9- 6-0 | | Less costs of Ex.49. | 0-10-0 |
| | Balance | 1043-10-0 | | Balance | 234-0-0 |

45 8/57

| Defendant no.3. | Rs. a.P. | Defendant no.5. | Rs. a.P. |
|---|---|---|---|
| 1. Stamp for power Ex.14.. | 0-10-0 | 1. Stamp for power Ex.28. | 0-10-0 |
| 2. Do for petition Ex.45, and 46. | 1- 4-0 | 2. Do for petition, Ex.30,47. | 1- 4-0 |
| 3. Service of process Ex.49. | 2- 8-0 | 3. Pleader's fee double set. | 468- 0-0 |
| 4. Pleader's fee one set | 234- 0-0 | | |
| 5. Copying fees Ex.81... | 0- 8-0 | | |
| Total Rs. | 238-14-0 | Total Rs. | 469-14-0 |
| Less costs of applications Exs.45 and 46 disallowed. | 1- 4-0 | Less costs of applications Exs.30,47 disallowed. | 1- 4-0 |
| Balance. | 237-10-0 | Balance. | 468-10-0 |

Given under my hand the seal of the Court this 21st day of July 1947.

Prepared by Sd.S.R.Shetti,
Clerk.

Sd. S. S. Tallur,
Civil Judge, Senior Division,
Karwar
11th August 1947.

Plaintiff's pleader:-

Defendat no.1 and 2's pleader: Sd.M. C. Kasbekar.

Defendant no.3's pleader. Sd. P. S. Komat.

Defendant no.4 - Exparte.

Defendant no.5's pleader- Sd. Bhavanishankar S.M..

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Original

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"True Copy"

Clerk of the Court.

Suits:
Kanara
For recovery of Rs. 6,798 as price of timber with interest thereon at 6 per cent. per annum amounting to Rs. 403 from 1st January 1944 upto to the date of the suit.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 9109
Bombay Castle, 10th September 1947.

Read Government Resolution, Legal Department, No. 6094, dated the 15th August 1945.

Endorsement from the Special Government Pleader, Karwar, No. 207, dated the 23rd July 1947 - Forwarding a copy of his letter addressed to the Divisional Forest Officer, Karwar, No. 206 of 1947, stating that the suit noted in the margi was decided by the Civil Judge, Senior Division, Karwar, on 21st July 1947 when the following order was passed :-

| | |
|---|---|
| In the Court of the Civil Judge, Senior Division, Kanara. Civil Suit No. 2 of 1945. | |
| Vaman Narayan Navak - - - - - Plaintiff; Vs. | |
| 1. The Province of Bombay ) Defen- 2. D.S. Kaikini ) dants. 3. Kashinath Vaman Shetiya) | |
| Claim Rs. 7,201/- | |

"Dismissed with costs."

Endorsement from the Special Government Pleader, Karwar, No. 244. dated the 25th August 1947, forwarding uncertified copies of judgment and decree.

RESOLUTION:- The result of the suit is recorded.

By order of the Governor of Bombay,
R.M.Mehta,
Assistant Secretary to Government.

To
The Revenue Department,
The Commissioner, Southern Division,
The Chief Conservator of Forests, Bombay Province
The Conservator of Forests, Southern Circle,
The Divisional Forest Officer, Western Division, Karwar.

Ko. 5.9.

Submitted for signature.
10/9.

Suits:
Kanara
For recovery of Rs. 6,798 as price of timber with interest thereon at 6 per cent. per annum amounting to Rs. 403 from 1st January 1944 up to the date of the suit.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 9109
Bombay Castle, 10th September 1947.

Read Government Resolution, Legal Department, No. 6094, dated the 15th August 1945.

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In the Court of the Civil Judge, Senior Division, Kanara.
Civil Suit No. 2 of 1945.

Vaman Narayan Nayak - - - - - Plaintiff;
Vs.
1. The Province of Bombay
2. D.S. Vaikini
3. Vashinath Vaman Shetiya
Defendants.

Claim Rs. 7,201/-

"Dismissed with costs."

Endorsement from the Special Government Pleader, Karwar, No. 244, dated the 25th August 1947, forwarding uncertified copies of judgment and decree.

RESOLUTION:- The result of the suit is recorded.

By order of the Governor of Bombay,

R.M.Mehta,

Assistant Secretary to Government.

To
The Revenue Department,
The Commissioner, Southern Division,
The Chief Conservator of Forests, Bombay Province
The Conservator of Forests, Southern Circle,
The Divisional Forest Officer, Western Division, Karwar.

Kc. 5.9.

Submitted for signature.
10/9

G.C.P.—(J) J 200—600—8-42—X4
G.R., J.D., No. 4398 dated 3-7-16.

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# IN HIS MAJESTY'S HIGH COURT OF JUDICATURE, APPELLATE SIDE, BOMBAY

APPEAL No. 354 OF 1947 FROM Original DECREE

Vaman Narayan Naik } Appellant

*versus*

The Province of Bombay } Respondent

Claim—Rupees 7201/-

No. 413 OF 1948

From

THE DEPUTY REGISTRAR,
High Court, Appellate Side, Bombay;

To

The Secretary. Legal Deptt. Govt of Bombay

Bombay, 19th January 1948.

Sir,

The Appellant abovenamed having presented an appeal from the decision of the Senior Sub. Judge of Kanara in Suit No. 2. of 1945, and the same having been registered in this Court, and this Court having on 18-12-1947, ordered notice to issue, I have the honour to inform you that the hearing of the said appeal will take place on the day of 194 , or on any subsequent day which to this Court may seem convenient; and that if no appearance is made on your behalf ~~either in person or~~ by an Advocate of this Court or agent duly authorised and instructed, it will be heard and determined in your absence.

Your obedient servant,

to be served on Govt. Pleader.

Deputy Registrar.

Suits:
Kanara
For recovery of Rs.6,798 as price of timber with interest thereon at 6 percent. per annum amounting to Rs. 403 from 1st January 1944 up to the date of the suit.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 2841
Bombay Castle, 22nd March 1948.

Read Government Resolution, Legal Department, No. 9109 dated the 10th September 1947.

Endorsement from the Government Pleader, High Court, Bombay No. 352 dated the 23rd January 1948 forwarding a copy of his letter to the Collector of Kanara and a copy of the notice served on him of first appeal No. 354 of 1947 filed by the Plaintiff in the suit noted in the margin.

| | |
|---|---|
| In the Court of the Civil Judge, Senior Division, Kanara. | |
| Civil Suit No. 2 of 1945. | |
| Vaman Narayan Nayak ..... Plaintiff; | |
| vs. | |
| 1. The Province of Bombay<br>2. D. S. Kaikini<br>3. Kashinath Vaman Shetiya | Defendants. |
| Claim Rs. 7,201/-. | |

Endorsement from the Government Pleader, High Court, Bombay No. 1019, dated the 12th March 1948 forwarding copy of the endorsement of the Collector of Kanara No. T.R.A. 217 dated the 6th March 1948, requesting him to defend the appeal on behalf of defendants Nos. 1 and 2 and forwarding papers of the case.

RESOLUTION. - Sanction is accorded to the defence of Civil appeal No. 354 of 1947 in the High Court, Bombay on the lines of the brief accompanying Government Resolution, Legal Department No. 6094, dated the 15th August 1945 and the favourable grounds contained in the Judgment of the Civil Judge, Senior Division, Karwar, dated the 21st July 1947.

Submitted for sign.
Orders at P. 8
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K/2

By order of the Governor of Bombay,

Original

R. M. Mehta.

Assistant Secretary to Government.

To
The Revenue Department,
The Commissioner, Southern Division,
The Chief Conservator of Forests, Bombay Province,
The Conservator of Forests, Southern Circle,
The Divisional Forest Officer, Western Division, Kanara,
The Government Pleader, High Court, Bombay.

Copy applied for on 4-8-50
Copy ready on 16-11-50
Copy delivered on 6-12-1950
Assistant Shirastedar.
28/11/50

APPEAL No. 354 OF 1947 FROM ORIGINAL DECREE.

Vaman Narayan Nayak (Original Plaintiff) Appellant:

*versus*

The Province of Bombay and others (Original Defendants) ... Respondents.

Appeal against the decision of S. S. Tallur, Esquire, Civil Judge (Senior Division) at Karwar in Special Jurisdiction Suit No. 2 of 1945.

Mr. K. G. Datar and Mr. N. M. Shanbhag, Advocates for the Appellant.

The Additional Assistant Government Pleader for Respondents Nos. 1 and 2.

Mr. D. R. Manerikar, Advocate for Respondent No. 3.

(CORAM:—Bhagwati & Dixit, JJ.)

1st August 1950.

*Oral Judgment* (*Per Bhagwati, J.*).—This is a First Appeal from the judgment of the learned Civil Judge, Senior Division, at Karwar who dismissed the plaintiff's suit against the Province of Bombay, the Divisional Forest Officer, the purchaser from the 4th defendant, the 4th defendant who is the alleged vendor of the plaintiff and the fifth defendant, a partner of the third defendant in his business of the coupe. The plaintiff alleged that he had purchased 290 logs of timber on the 12th May 1943 from the fourth defendant for a consideration of Rs. 4,756, that these logs of timber had been stacked at Tadri Bundar, that after the 12th May 1943 the fourth defendant had transferred his rights in the coupe to the third defendant, that the third defendant had obtained export passes from the second defendant in regard to these 290 logs of timber in about December 1943 and had removed the same from Tadri Bundar and that, therefore, he was entitled to recover the price of these 290 logs of timber from the third defendant. He also claimed to recover the amount from defendants Nos. 1 and 2 on the allegation that they had wrongfully issued the export passes to the third defendant thus depriving him (the plaintiff) of his ownership of the 290 logs of timber.

The learned Judge before whom the suit was tried after considering the oral and documentary evidence which was produced before him, came to the conclusion that the alleged sale by the 4th defendant in favour of the plaintiff on the 12th May 1943 was bogus and that the plaintiff was not entitled to recover any sum from the 3rd defendant. He also dismissed the plaintiff's suit against defendants Nos. 1 and 2, holding that there was no cause of action against them and also that the suit as against the 2nd defendant was barred under section 74 of the Indian Forests Act. This appeal is filed by the plaintiff against that decision of the learned Judge below.

It is significant to note that no relief was claimed by the plaintiff against the 4th defendant, as also against the 5th defendant and they were made formal parties to the suit. One would have expected that in any event the plaintiff would have claimed a relief in this suit against the 4th defendant because if the 3rd defendant succeeded in establishing that there was a valid sale of these 290 logs of timber effected by the 4th defendant in favour of the 3rd defendant at a date subsequent to the 12th May 1943, the plaintiff would be entitled to recover the amount from the 4th defendant as on a failure of consideration or as and by way of damages for wrongful conversion of the goods by the 4th defendant. Nothing of the type was, however, done by the plaintiff and that is certainly a count which will have to be considered while arriving at a decision in regard to the genuine nature of the transaction of the 12th May 1943. The plaintiff is related to the 4th defendant, the 4th defendant being the plaintiff's



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Suits:
Kanara
For recovery of Rs.6,798 as price of timber with interest thereon at 6 percent. per annum amounting to Rs. 403 from 1st January 1944 up to the date of the suit.

GOVERNMENT OF BOMBAY,
Legal Department,
Resolution No. 2841
Bombay Castle, 27th March 1948.

Read Government Resolution, Legal Department, No. 9109 dated the 10th September 1947.

Endorsement from the Government Pleader, High Court, Bombay No. 352 dated the 23rd January 1948 forwarding a copy of his letter to the Collector of Kanara and a copy of the notice served on him of first appeal No. 354 of 1947 filed by the Plaintiff in the suit noted in the margin.

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|---|
| In the Court of the Civil Judge, Senior Division, Kanara. |
| Civil Suit No. 2 of 1945. |
| Vaman Narayan Nayak ..... Plaintiff; vs. |
| 1. The Province of Bombay<br>2. D. S. Kaikini<br>3. Kashinath Vaman Shetiya } Defendants. |
| Claim Rs. 7,201/- |

Endorsement from the Government Pleader, High Court, Bombay No. 1019, dated the 12th March 1948 forwarding copy of the endorsement of the Collector of Kanara No. T.R.A. 217 dated the 6th March 1948, requesting him to defend the appeal on behalf of defendants Nos. 1 and 2 and forwarding papers of the case.

RESOLUTION. - Sanction is accorded to the defence of Civil appeal No. 354 of 1947 in the High Court, Bombay on the lines of the brief accompanying Government Resolution, Legal Department No. 6094, dated the 15th August 1945 and the favourable grounds contained in the Judgment of the Civil Judge, Senior Division, Karwar, dated the 21st July 1947.

By order of the Governor of Bombay,

Original R. M. Mehta

R. M. Mehta,

Assistant Secretary to Government.

Submitted for sign.
Orders at p. 8
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The Revenue Department,
The Commissioner, Southern Division,
The Chief Conservator of Forests, Bombay Province,
The Conservator of Forests, Southern Circle,
The Divisional Forest Officer, Western Division, Kanara,
The Government Pleader, High Court, Bombay.

BM.
19.3.

it appears abundantly clear that whatever cause of action the plaintiff could have was against the 4th defendant. It was the 4th defendant who effected a transaction of the transfer of the rights of the coupe as between himself and the 3rd defendant on or about 24th June 1943 i.e. after the 12th May 1943 when he (the 4th defendant) is alleged to have received Rs. 4,756 from the plaintiff. The plaintiff would in that event have been entitled to recover this sum from the 4th defendant as on a failure of consideration or as and by way of damages for wrongful conversion of these 290 logs of timber by the 4th defendant. We are, however, not prepared to go into that question by reason of the fact that the plaintiff has deliberately chosen not to claim any relief in this suit against the 4th defendant and nothing more need be said on that aspect of the question.

The result is that the decree of the lower Court will be confirmed and this appeal will be dismissed with costs.

By order of the Court,

Exd. by:—M. L. S.

(Signed) S. H. BELAVADI,

Deputy Registrar.

True Copy

for Deputy Registrar.

The 16th day of November 1950

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

was also, even though he admitted as between himself and the plaintiff the receipt of the monies, not in a position to produce any books of account. He said that he had maintained the books of account and that these entries would appear in those books of account. In regard to the books of account, however, he made the statement that he had given the books of account to the 3rd defendant when he had transferred his interest in the coupe to the 3rd defendant. It is significant, however, to note that apart from making this allegation no attempt was made by either the plaintiff or the 4th defendant in the Court below to get the 3rd defendant to produce these books of account. The 3rd defendant did not step into the witness-box, but his advocate relied upon whatever materials were elicited in the cross-examination of the plaintiff and the 4th defendant and also on the other documents which were produced in the case. The third defendant was not a party or privy to the transaction which took place between the plaintiff and the 4th defendant, nor was he in any manner concerned therewith, so that in regard to the evidence which was led in behalf of this transaction of sale his presence in the witness-box was not necessary and no adverse inference could therefore, be drawn against him by reason of his not having stepped into the witness-box in order to enable the advocates for the plaintiff and the 4th defendant to cross-examine him. If, at all, the entries in the books of account were considered relevant and necessary in order to prove the plaintiff's case, it was the duty of the plaintiff or the 4th defendant to serve a notice on the 3rd defendant to produce these documents. If a notice to produce had been served and the 3rd defendant had not produced the books of account inspite of it, we would have been justified in drawing an adverse inference against the 3rd defendant for the non-production of the books of account. We would have then expected the third defendant at least to deny the version given by the 4th defendant at regards the 4th defendant handing over the books of account to him (the 3rd defendant) when the coupe was transferred by the 4th defendant to the 3rd defendant. In the absence of any such circumstance, there is no justification for drawing any adverse inference against the 3rd defendant. The position as it obtains is that there are no books of account produced either by the plaintiff or by the 4th defendant which would go to show that Rs. 4,756 ever passed from the plaintiff to the 4th defendant.

In regard to this receipt which was Exhibit 67 in the Court below, there is also one other circumstance and it is that it was not produced before the Court until more than two years after the institution of the suit. A perusal of the judgment of the Court below in behalf of the late production of this receipt along with the other document, the *patti*, which is referred to therein being Exhibit 68 in the suit, is enough to show how he plaintiff shifted his ground from time to time in regard to the non-production of these documents till such late stage. It shows the plaintiff in a very bad light and shakes the confidence of the Court in his credibility. The manner in which he sought to justify the late production of these documents is enough to discredit him all the way and we are of the opinion that no reliance can be placed upon the testimony of the plaintiff at all unless it is corroborated by unipeachable documentary evidence. The difficulty, however, in regard to this receipt, Exhibit 67, is that apart from this having been produced at such a late stage, the very appearance of it is such as not to inspire any confidence in the genuineness of it. It is written on some sheets of paper taken out from an old exercise book which would be the last thing which one would expect from the pleader's clerk who was responsible for the writing of the receipt and obtaining the same from the 4th defendant. To say the least the documents which have been produced by the plaintiff in support of this sale alleged to have been made by the 4th defendant to him on the 12th May 1943 are not satisfactory and do not corroborate the plaintiff in any manner whatever. In this state of the evidence, it is impossible for us to come to the conclusion in favour of the plaintiff that there was a sale of these 290 logs of timber effected by the 4th defendant to him on the 12th May 1943 as alleged. We have come to the conclusion that the finding of the learned Judge in regard to issue No. 5 in that behalf was quite correct and the plaintiff has failed to prove that there was a sale of these 290 logs of timber effected by the 4th defendant in his favour on the 12th May 1943.

This being the position it is not necessary for us to go into the further question as to whether the sale was valid without the sanction of the Government in that behalf. It is also unnecessary to go into the question as regards the liability, if any, of defendants Nos. 1 and 2 in regard to wrongful conversion or wrongful disposition of these 290 logs of timber by the 3rd defendant with the connivance of or in collusion with one or more of them.

The plaintiff has only got to thank himself for not claiming any relief against the 4th defendant because under the circumstances we have set out hereinabove

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...AL No. 354 OF 1947 FROM ORIGINAL DECREE.

Vaman Narayan Nayak (Original Plaintiff) ... Appellant;

*versus*

The Province of Bombay and others (Original Defendants) ... Respondents.

Appeal against the decision of S. S. Tallur, Esquire, Civil Judge (Senior Division) at Karwar in Special Jurisdiction Suit No. 2 of 1945.

Mr. K. G. Datar and Mr. N. M. Shanbhag, Advocates for the Appellant.

The Additional Assistant Government Pleader for Respondents Nos. 1 and 2.

Mr. D. R. Maherikar, Advocate for Respondent No. 3.

(CORAM:—Bhagwati & Dixit, JJ.)

1st August 1950.

*Oral Judgment* (*Per Bhagwati, J.*).—This is a First Appeal from the judgment of the learned Civil Judge, Senior Division, at Karwar who dismissed the plaintiff's suit against the Province of Bombay, the Divisional Forest Officer, the purchaser from the 4th defendant, the 4th defendant who is the alleged vendor of the plaintiff and the fifth defendant, a partner of the third defendant in his business of the coupe. The plaintiff alleged that he had purchased 290 logs of timber on the 12th May 1943 from the fourth defendant for a consideration of Rs. 4,756, that these logs of timber had been stacked at Tadri Bundar, that after the 12th May 1943 the fourth defendant had transferred his rights in the coupe to the third defendant, that the third defendant had obtained export passes from the second defendant in regard to these 290 logs of timber in about December 1943 and had removed the same from Tadri Bundar and that, therefore, he was entitled to recover the price of these 290 logs of timber from the third defendant. He also claimed to recover the amount from defendants Nos. 1 and 2 on the allegation that they had wrongfully issued the export passes to the third defendant thus depriving him (the plaintiff) of his ownership of the 290 logs of timber.

The learned Judge before whom the suit was tried after considering the oral and documentary evidence which was produced before him, came to the conclusion that the alleged sale by the 4th defendant in favour of the plaintiff on the 12th May 1943 was bogus and that the plaintiff was not entitled to recover any sum from the 3rd defendant. He also dismissed the plaintiff's suit against defendants Nos. 1 and 2, holding that there was no cause of action against them and also that the suit as against the 2nd defendant was barred under section 74 of the Indian Forests Act. This appeal is filed by the plaintiff against that decision of the learned Judge below.

It is significant to note that no relief was claimed by the plaintiff against the 4th defendant, as also against the 5th defendant and they were made formal parties to the suit. One would have expected that in any event the plaintiff would have claimed a relief in this suit against the 4th defendant because if the 3rd defendant succeeded in establishing that there was a valid sale of these 290 logs of timber effected by the 4th defendant in favour of the 3rd defendant at a date subsequent to the 12th May 1943, the plaintiff would be entitled to recover the amount from the 4th defendant as on a failure of consideration or as and by way of damages for wrongful conversion of the goods by the 4th defendant. Nothing of the type was, however, done by the plaintiff and that is certainly a count which will have to be considered while arriving at a decision in regard to the genuine nature of the transaction of the 12th May 1943. The plaintiff is related to the 4th defendant, the 4th defendant being the plaintiff's



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wife's maternal uncle. The plaintiff has been carrying on the business of confectionery and presumably had nothing to do with logs of timber except by way of requiring some for carrying on his confectionery business. A purchase of 290 logs of timber was certainly out of place so far as his confectionery business was concerned. The 4th defendant had entered into a contract with the Government for exploiting coupe No. 14, Block No. VIII in the Kodambale forest area on or about 29th October 1942. He had to pay Rs. 2,888 to the Government in respect of that contract by four instalments of Rs. 722 each. He had no monies and on the 2nd November 1942 he entered into a contract with the 3rd defendant, Exhibit 95 in the suit, under which he got an advance of Rs. 500 from the 3rd defendant, agreeing to sell to the 3rd defendant certain logs of timber as therein mentioned. The 4th defendant also entered into another contract with the 3rd defendant on the 29th November 1942, Exhibit 96 in the suit, under which also he got from the 3rd defendant Rs. 500 as advance, agreeing to sell to the 3rd defendant certain other logs of timber as therein mentioned. He got in all thus Rs. 1,000 by way of advances from the 3rd defendant. He worked the coupe and there were 290 logs of timber transported by him from the area of the coupe to Tadri Bundar in pursuance of the transport passes which he obtained from the Range Forest Officer. It appears that as between the 4th and the 3rd defendants, the 4th defendant was not in a position to fulfil his part of the contract and on or about 24th June 1943 he transferred his coupe rights to the 3rd defendant with the sanction of the Government and on payment of certain transfer fee which was stipulated in the contract between him and the Government. It appears that while he transferred his rights in the coupe to the 3rd defendant he wanted to reserve unto himself a share in the business which was going to be conducted by the 3rd defendant and negotiations took place in that behalf between the 4th defendant and the 3rd defendant. These negotiations were not so easy and in order to bring pressure on the 3rd defendant to give him a share, the 4th defendant appears to have made an application to the Range Forest Officer on the 9th July 1943, stating that he had sold the 290 logs of timber which were lying at Tadri Bundar to the plaintiff and asking the Range Forest Officer to issue export passes in connection therewith. After the receipt of this letter by the Range Forest Officer on the 12th July 1943 certain correspondence took place between the Range Forest Officer and the Divisional Forest Officer. The Range Forest Officer maintained that these 290 logs of timber lying at Tadri Bundar did not belong to the 3rd defendant. The Divisional Forest Officer maintained, on the other hand, that in so far as all the rights of the 4th defendant in the coupe had been transferred by him to the 3rd defendant, the 3rd defendant was entitled to all the logs of timber which were either in the fuel depot or at Tadri Bundar or anywhere in the coupe and that therefore the plaintiff had no right in these 290 logs of timber lying at Tadri Bundar. This correspondence went on for a considerable time after July 1943 and it was ultimately in December 1943 that export passes were issued by the Divisional Forest Officer to the 3rd defendant, pursuant to which the 3rd defendant removed the 290 logs of timber from Tadri Bundar. In the meanwhile the negotiations which were carried on between the 4th defendant and the 3rd defendant in regard to a share to be given to the 4th defendant in the coupe business materialized and a share was given by the 3rd defendant to the 4th defendant in that business and on the 21st July 1943 the sureties signed the contract agreeing to the transfer of this business from the 4th defendant to the 3rd defendant.

Nothing further appears to have been done by the plaintiff after July 1943 until we come to 5th February 1944 when he gave notice before the suit and the present suit was filed by him on 31st January 1945.

In support of the sale which has been put forward by the plaintiff he has relied upon a receipt dated 12th May 1943 in regard to the sum of Rs. 4,756 alleged to have been paid by him to the 4th defendant on that day. This receipt was written out by a pleader's clerk who gave evidence before the Court below. He no doubt stated that the monies passed from the plaintiff to the 4th defendant on this day the 12th May 1943 and there was no cross-examination addressed to him in behalf of this payment. The plaintiff and the 4th defendant, however, were both of them examined in the Court below. The plaintiff was asked as to how he had been able to produce all these monies on that day and he said that he had the monies with him and he had not got to borrow any amount from anybody else on that day. When, however, he was asked whether he had in his books of account entries in connection with this payment he said that he had no books of account which contained any entries in regard to this sum, though he admitted that in respect of money lending transaction of his amounting to Rs. 1,000 he had a book of account with him which evidenced that transaction. The 4th defendant

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28/29-9-1950.

In the High Court of Judicature at Bombay.

Tuesday the 1st day of August 1950.

Appeal No.354 of 1947 From Original Decree

Vaman Narayan Nayak (Original Plaintiff).. ..Appellant.

Versus

1 The Province of Bombay; 2 D.S.Kaikini,Divisional Forest Officer,Western Division,Kanara,Karwar; 3 Kashinath Vaman Shetye; 4 Pandurang Narayan Shanbhag; 5 Balmukund Keshav Acharya. (Original Defendants).. .. ...Respondents.

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

Claim Rs.7201 for all purposes.

The plaintiff sued to recover Rs.7201 with interest and costs of the suit with regard to the loss sustained by him on account of the illegal acts of the defendants.

The Special Jurisdiction suit No.2 of 1945 was decided by the Civil Judge Senior Division of Karwar who dismissed it with costs in separate sets in favour of defendants Nos.1 and2 and respondent No.3 respectively.

An appeal has been admitted in the High Court from the decision of the lower Court.Notice was ordered to issue by the Hon'ble Mr.Justice Gajendragadkar on the 18th day of December 1947.

The grounds of objection to the decision appealed against are:-

1). The decision of the lower Court is contrary to law and against evidence in the case.

2). The lower Court erred in dismissing the plff's suit.

3). The lower Court erred in holding that the plaintiff is not entitled to any relief against defendants Nos.1 to 3.

4). The lower Court erred in holding that the suit against Deft No.2 was barred under Sec.74 of the Indian Forest Act.

5). The lower Court should have held that defendant No.2 had not acted in good faith and that his action was high-handed, illegal ultra vires and unauthorised and that he could not claim protection under section 74 of the Indian Forests Act.

6). The lower Court erred in holding that Deft No.2 was not informed of the sale of 290 suit logs in favour of plaintiff.

7). The lower Court erred in holding that on 1st December 1943 defendant No.2 was not aware of the sale of 290 suit logs by defendant No.4 in favour of the plaintiff in spite of the report of the Range Forest Officer,dated 26th July 1943,and correspon--dence connected therewith.

8). The lower Court has failed to grasp the proper significan--ce of exhibits 56,57,58 and 59.

9). The lower Court should have drawn adverse inferences against defendants Nos.1 and 2 since Mr.Desouza,the Range Forest Officer,who was cited as a witness for defendants Nos.1 and 2 was not examined by them though the plaintiff moved the court to make him available for cross examination.

10). The lower Court should have held that defendant No.2 had gone far out of his way in that he issued export passes to defendant No.3 when there was no clear proof that they belonged to him in that he gave the transfer deed an interpretation far from the normal and common trend of language and in that he did not at all inquire into the representation and the claims of defendant No.4 and the plaintiff and that,therefore,the actions of defendant No.2 were both illegal and malafide.

11). The lower Court should have held that it was the duty of defendant No.2 to find out the truth by giving an opportunity to defendant No.4 or plaintiff to prove their case and as no such thing was done he had not acted in good faith.

12). The lower Court erred in holding that defendant No.4 was not the owner on 12th May 1943 of the entire material lying on Tadri-bunder.

12/59

13). The lower Court has misunderstood and misconstrued the transfer deed between defendant No.4 and deft No.3 (Exh.52).

14). The lower Court erred in accepting the explanation and interpretation of the transfer deed (Ex.52) as given by deft No.2.

15). The lower Court has erred in interpreting the term - "ચકોરની" as meaning "of the coupe" instead of taking the common and normal acceptation "in the coupe"

16). The lower Court has erred in disregarding all the canons of the interpretations inasmuch as it relies too much on the interpretation of Exhibit 52 given by defendant No.2 instead of looking to the words that have been used.

17). The lower Court erred in holding that defendant No.4 had by the transfer deed (Exhibit 52) of 19th June 1943 assigned to defendant No.3 his entire contract with the Governor of Bombay dated 29th October 1942 (Exhibit 50) though admittedly defendant No.4 had worked the contracts from 29th October 1942 to 19th June 1943 for nearly 8 months, without being accountable to defendant No.3.

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

18). The lower Court in any case erred in holding that the transfer deed Exhibit 52 had become retrospectively effective in the absence of any specific provision to that effect in the transfer deed itself.

19). The lower Court has failed to see that in any case to interprete the transfer deed as relating to material "of the coupe" or "from the coupe" is to make the transfer itself void for uncertainty.

20). The lower Court should have held that the transfer in favour of defendant No.3 became effective only from the date of transfer and not earlier and that it related to the material then lying in the coupe and not to the material "of the coupe" or "from the coupe" and that this position was admitted by Government through the Range Forest Officer in his report to the D.F.O. dated 26th July 1943 (Exhibit 58).

21). The lower Court erred in holding that exhibits 95 and 96 are "contracts of sale".

22). The lower Court should have held them to be only "agreements to sell".

23). The lower Court erred in holding that the suit logs were sold by defendant No.4 to defendant No.3 under contracts exhibits 95 and 96 and the property in them had passed to defendant No.3 on 9th May 1943 when they weredelivered to Exhibit 91 as the agent of defendant No.3.

24). The lower Court should have held that the suit logs were not delivered to exhibit 91 as the agent of Deft No.3.

25). The lower Court should have held that exhibits 95 and 96 being merely agreements to sell no property could pass to defendant No.3 under them.

26). Exhibit 91 should not have been believed.

27). . It should have been held that exhibit 93 is not the post card written by exhibit 91 and that exhibit 93 was subsequent--ly got up.

28). The lower Court should have held that in any case there was no sale in favour of Deft.No.3 under exhibits 95 and 96.

29). The lower Court should have held that at best defednadant No.4 was liable in damages to defendant No.3 for breach of con--tract under Ex.95 and 96 which issue was beyond the scope of this suit.

30). The lower Court confused the issues when it held that defendant No.4 was only entitled to get the value of the timber from defendant No.3,whereas it should have held that the defendant No.4 could only be liable in damages to deft No.3 for breach of contract.

31). The lower Court should have held that from the written statement of defendant No.3 it was clear that defendant No.3 still treated defendant No.4 as the owner of suit logs.

32). The lower Court should have drawn an adverse inference against deft No.3 inasmuch as he did not enter the witness-box though he has called upon by the plff by an application to the Court to enter the witness box and the Court ordered him to do so.

33). The lower Court should have held that he (Deft No.3) had neither proved his case nor that he was the owner of the suit material.

34). The lo er Court should have held that defendant No.3 came in the picture only after the transfer deed and had no right what--soever to the suit logs which were removed out of the coupe and sold to the plff before defendant No.3 came into the picture.

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35). The lower Court should have held that on 12th May 1943 defendant No.4 was the owner of 290 suit logs lying on the Tadri bunder and that he had full powers of disposalover them

36). The lower Court should have held that the sale in fav--ɓur of plaintiff in respect of the 290 suit logs was proved and that the plaintiff had become the owner of the same as from the 12th May 1943.

37). The lower Court should have believed exhibits 60,67, 68,80 and 87.

38). The lower Court should have presumed that defendant No.3 had suppressed the accounts of defendant No.4 and that the sale in plaintiff's favour which appeared in the accounts of defendant No.4 had been proved when especially the case of the defendant No.4 was that defendant No.3 had taken over his account books for the purpose of working the coupe after trans--fer and the sworn testimony of defendant No.4 and plaintiff had not been rebutted.

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39). The lower Court erred in holding that the sale in favour of the plaintiff was hollow.

40). It was an error to hold that the application of defen dant No.4 dated 9th July 1943 (Exhibit 55) was only intended to bring pressure on defendants Nos.3 and 5 to compel them to give defendant No.4 a share in the future profits.

41). The lower Court should have held that exhibit 55 was made with the genuine intention of establishing the sale in favour of plaintiff and not with any ulterior motive.

42). The sworn testimony of Exhibit 87,Pandurang Shanbhag, and the plaintiff should have been believed.

43). The remarks of the lower Court regarding the sale being a collusive transaction and unwarranted since nothing has been elicited in the cross-examination of the plaintiff or the defendant No.4 or exhibit 87,the writer of Exhibit 67.

44). The lower Court has erred in drawing adverse inference against the plaintiff for the late production of the documents since they were produced with an application sworn on an affi--davit and a date was fixed for the other side to oppose and still the other side had remained absent.

45). The lower Court should have held that it was too late for the other side to challenge them.

46). The lower Court should have held that in any event the plaintiff was not bound by exhibits 95 and 96,the agreements to sell concluded between defendants Nos.4 and 3,since it is neither alleged nor proved that the plaintiff had any notice of these agreements.

47). The lower Court should have held that plaintiff was a bona fide purchaser for value without notice.

48). The lower Court should have held that the Divisional Forest Officer had authorised the Range Forest Officer to sane tion export of the logs by the orders referred to in exhibits 63 and 92 and that there being a sanction to export to outside destinations it was not necessary to get further sales sanc--tioned by the divisional Forest Officer inasmuch as as sanc -tion to export would be operative as unconditional permission to sell to anybody whosoever.

49). The lower Court should have drawn adverse inference against the defendants Nos.1 and 2 inasmuch as the orders of the Divisional Forest Officer referred in Exhibit 63 and 82 have not been produced by them and no satisfactory explanation for not producing the same has been given.

50). The lower Court has erred gravely in not drawing an ad--verse inference against defendants Nos.1 and 2 for not produ--cing the orders of the Divisional Forest Officer referred to in exhibits 63 and 82 and has gone far out of its way in trying to save and absolve defendants Nos.1 and 2 from all blame and liability for not producing the said orders in spite of the fact that specific allegations concerning one of the said orders,namely G-14-674 were made in the plaint and that there was nothing in the way of defendants Nos.1 and 2 to prevent them from producing the same. The lower Court has erred in holding that the plaintiff could not make a grievance of the non-production of G.14-674.

51). The lower Court erred in holding that the permission implied in exhibit 82 by the words "[illegible]" had reference to the transport from the coupe from the bounder

only. If that was the case no such permission from the Division-al Forest Officer was necessary as the range forester or the contractor himself could issue those passes as has been admi--tted by defendant No.2.

52). The lower Court should have held that the words "ठेकेदारांचे" in exhibit 82 referred to the export of the timber from the bunder to outside destinations.

53). The lower Court erred in accepting the explanation of defendant No.2 regarding the transport and export passes without any proof of rules or precedent to that effect.

54). The lower Court erred in accepting without proof the bare statement of defendant No.2 that export passes are not issued unless the material is removed from the coupe to the bunder.

55). The lower Court should have held that defendant No.2 having admitted that the suit logs were removed from the coupe to the bunder with the permission of the Government and there being an order of the Divisional Forest Officer to export it as implied in exhibits 63 and 82 no further permission was necess--ary to sell the material to anybody.

56). The lower Court erred in holding that the plaintiff's case did not fall under sec.30 of the Sale of Godds Act.

57). It was an error to hold that the Exhs.60,80 and the 11 passes were not the documents of title to the 290 suit logs.

58). The lower Court should have held that the defendant No.3 inasmuch as he was aware of the sale in favour of the plff. and inasmuch as he admits having removed the suit logs from the Tadri bunder was liable to pay damages to the plaintiff.

59). The lower Court should have held that defendant No.1 and 2 inasmuch they have acted malafide and without authority and illegally and had helped defendant No.3 by their wrong orders were liable to pay damages to the plaintiff.

60). The lower Court should have held that the plff was entitl--ed to get interest on the price of the logs from the date of the removal.

61). The lower Court's appreciation of law and evidence is faulty.

62). Truthful and reliable testimony on behalf of the plaintif has been wrongly discarded and the interested testimony on

HIGH COURT APPELLATE SIDE CERTIFIED COPY BOMBAY

behalf of the defendants has been wrongly believed and relied upon.

63). Proper issues were not framed and proper and legal inferences have not been drawn.

64). The burden of proof was wrongly cast on the plaintiff.

65). The documents have been misunderstood and misconstrued.

66). The order as to costs is wrong.

67). The suit should have been decreed with costs throughout as prayed for.

Coram:- Bhagwati and Dixit JJ.

For the reasons stated in the accompanying judgment, the Court confirms the decree of the lower Court and dismiss-es the appeal with costs.

1st day of August 1950.

Sd/- S.H.Belavadi
Deputy Registrar.

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Bill of costs in the High Court,

| Bythe Appellant | Rs.as.ps. |
|---|---|
| Stamps for memorandum of appeal. | 512--8-0 |
| Stamps for copies of decree and Judgment. | 1-14-0 |
| Stamps for vakalatnamas | 5--0-0 |
| Bhatta forprocess. | 25--0-0 |
| Sectioner's Fee. | 31--0-0 |
| Advocate's Fee (double set).. | 468--0-8 |
| Printing charges. | 11--0-0 |
| Copying charges for preparing paper books. | 48--0-0 |
| Translation fee. | 20--0-0 |
| Total Rs... | 1132--6-8. |

| By the Respondent Nos.1 and 2:-- | Rs.as.ps. |
|---|---|
| Stamps for vakalatnama.(Govt.Pleader appears). | 0--0-0 |
| Advocate's Fee. | 234--0-4 |
| Total Rs.... | 234--0-4 |

| By the Respondent No.3:-- | Rs.as.ps. |
|---|---|
| Stamps for vakalatnama. | 2--8-0 |
| Advocate's Fee. | 234--0-4 |
| Total Rs.... | 236--8-4 |

(SEAL)

Sd/- S.H.Belavadi
Deputy Registrar,
The 1st day of August 1950.

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True Copy

For Deputy Registrar,
The 29th day of September 1950.

65 132

Suits:
Kanara:
For recovery of Rs.6,798 as price of timber with interest thereon at 6 percent per annum amounting to Rs.408 from 1st January 1944 up to the date of the suit.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No.17862
Bombay Castle, 18th December 1950.

Read Government Resolution, Legal Department No.2841 dated the 22nd March 1948.

Letter from the Government Pleader, High Court, Bombay, No.5140 dated the 21st August 1950, stating that appeal No.354 of 1947 in the suit noted in the margin was decided by the High Court, on 1st August 1950, when the following order was passed :-

In the Court of the Civil Judge,
Senior Division, Kanara.

Civil Suit No.2 of 1945.

Vaman Narayan Nayak. ....Plaintiff;
Vs.
1. The Province of Bombay )
2. D.S. Kaikini ) Defendants.
3. Kashinath Vaman Shettiya. )

Claim Rs.7,2010-.

"The Court confirms the decree of the Lower Court and dismisses the appeal with Costs".

Letter from the Government Pleader, High Court, Bombay, No.12437 dated the 8th December 1950, forwarding certified copies of the judgme and decree.

RESOLUTION:- The result of the appeal is recorded.

By order of the Governor of Bombay,

original S. Bhamgara

E.P.Bhamgara,
Additional Assistant Secretary to Government.

Issued on 18/12

To
The ~~Revenue Department~~, Agricultural & Forest Deptt
The Chief Conservator of Forests, Bombay State,
The Conservator of Forests to Southern Circle,
The Divisional Forest Officer Western Division, Kanara,
The Government Pleader High Court, Bombay.

Subject to Rpn
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13.12.